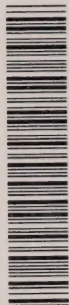


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In the supreme court of Canada



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# In the Supreme Court of Canada

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IN THE MATTER OF A REFERENCE AS TO THE VALIDITY OF THE  
COMBINES INVESTIGATION ACT, R.S.C., 1927, CHAPTER 26, AND  
OF SECTION 498 OF THE CRIMINAL CODE.

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2716

## APPENDIX

TO

FACTUM OF THE ATTORNEY-GENERAL OF CANADA

---

W. STUART EDWARDS, K.C.

*Solicitor for the Attorney-General of Canada*

OTTAWA  
F. A. ACLAND  
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY  
1929

In the Supreme Court of Canada

Statutes  
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## In the Supreme Court of Canada

IN THE MATTER OF A REFERENCE AS TO THE VALIDITY OF THE COMBINES  
INVESTIGATION ACT, R.S.C. 1927, CHAPTER 26, AND OF SECTION 498 OF  
THE CRIMINAL CODE.

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THE BRITISH NORTH AMERICA ACT, 1867, SECTIONS 91, 92, 101, AND 122,  
30 Victoria, c. 3

*Assented to 29th March, 1867*

POWERS OF THE PARLIAMENT

Legislative  
Authority  
of  
Parliament  
of Canada.

**91.** It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces, and for greater Certainty, but not so as to restrict the Generality of the foregoing  
10 Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,—

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
- 20 7. Militia, Military and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country or between Two Provinces.
14. Currency and Coinage.
- 30 15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.





21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians, and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.
- 10 29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

#### EXCLUSIVE POWERS OF PROVINCIAL LEGISLATURES

Subjects of  
exclusive  
Provincial  
Legislation.

**92.** In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated;  
20 that is to say,—

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant-Governor.
2. Direct Taxation within the Province in order to the Raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
- 30 6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.





9. Shop, Saloon, Tavern, Auctioneer, and other Licenses in order to the raising of a Revenue for Provincial, Local or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes:—

(a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:

- 10 (b) Lines of Steam Ships between the Province and any British or Foreign Country:

Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.
- 20 14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
16. Generally all Matters of a merely local or private Nature in the Province.

General  
Court of  
Appeal, etc.

**101.** The Parliament of Canada may, notwithstanding anything in this Act, from Time to Time, provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada.

Continuance 30  
of customs  
and excise  
laws.

**122.** The Customs and Excise Laws of each Province shall, subject to the Provisions of this Act, continue in force until altered by the Parliament of Canada.





1888

REPORT OF THE SELECT COMMITTEE OF THE HOUSE OF COMMONS  
APPOINTED TO INVESTIGATE AND REPORT UPON ALLEGED  
COMBINATIONS IN MANUFACTURES, TRADE AND INSURANCE  
IN CANADA—MAY 16, 1888.<sup>(1)</sup>

HOUSE OF COMMONS, CANADA,  
OTTAWA, 16th May, 1888.

The Select Committee<sup>(2)</sup> appointed by the House of Commons on the 29th February, 1888, "To examine into and report upon the nature, extent and effect of  
10 certain combinations said to exist with reference to the purchase and sale, or manufacture and sale, in Canada, of any foreign or Canadian products," and still further extended by Resolution of the House of Commons on the 8th March, 1888, "To include the alleged Combinations of Fire Insurance Companies doing business in Canada," beg to submit its Report:—

The Committee entered upon the discharge of the duties imposed upon it on the sixth day of March, 1888, and held 26 meetings, having continued the investigation till the 8th day of May, instant.

The time at the disposal of the Committee was not sufficient to examine into the nature and extent of other alleged combinations other than those hereinafter  
20 specified.

Sixty-three witnesses were examined, and a full investigation made in the following subjects.

The subjects examined were:—

Sugar and Groceries; Coal; Biscuits and Confectionery; Combination Against Canadian Watch Case Manufacturers; Barbed Wire; Binder Twine; Agricultural Implements; Stoves; Coffin Makers and Undertakers; Oatmeal Millers; Combinations of Egg Dealers; Barley; and Canadian Fire Underwriters' Association.

(1) Appendix (No. 3), to Volume 22 of the Journals of the House of Commons, 1888.

(2) The Committee consisted of the following members:—

Mr. Wallace, Chairman;	Mr. Casgrain,	Mr. Guillet,
" Bain (Soulanges),	" Daly,	" Grandbois,
" Bain (Wentworth),	" Fisher,	" Landry,
" Bechard,	" Flynn,	" McDougald (Pictou),
" Boyle,	" Gillmor,	" McKay,
		" Wood (Westmoreland).





The manufacture of watch-cases in Canada has grown in a few years into large proportions, and it is claimed by two manufacturers that they have sufficient capacity to supply the Canadian market.

One of these firms was compelled to join the American association or they "would be frozen out." There is a Canadian association of jobbers in American watches, in affiliation with, and under the control of this American association.

By their constitution any member violating the rules shall forfeit \$500, and be expelled from the association.

If the American association are successful in their present efforts, a flourishing 10 Canadian industry will be destroyed.

#### SUGAR AND GROCERIES

The combination between the sugar refiners and the Dominion Grocers' Guild entered into on the 20th April, 1887, was originated by the Guild.

This Guild was formed in Montreal, on the 7th June, 1884, and claimed to represent, at the time the sugar agreement was adopted, over 95 per cent of the wholesale dealers in groceries, including manufacturers of confectioneries and biscuits, in the provinces of Ontario and Quebec, beyond which the membership and control of the Guild did not extend. After several ineffectual attempts made by the Guild during the previous year, the Refiners of the Dominion consented to an arrange-  
20 ment by which sales of their products should be made on more favourable terms to members of the Guild than to non-members.

The first agreement was that the dealers who refused to be bound under it should be charged a  $\frac{1}{4}$  of a cent per pound more than to signers of the agreement on all grades of white sugar. This was increased by subsequent negotiation to  $\frac{1}{2}$  cent per pound advance on same grades. This arrangement was cancelled, and the following made: that is to say,  $\frac{1}{8}$  of a cent per pound advance on *all grades*, of both yellow and white sugars, without the discount allowed to parties to the agreement, which was  $2\frac{1}{2}$  per cent. This was shown to be equivalent to an advance of about 30 cents per 100 pounds on all grades.

30 It was also agreed that non-signers were to be compelled to buy two barrels of yellow sugar to one of white, but this condition was not long in existence.

There was no evidence of any combination amongst the several Refiners or any of them to fix uniform prices at which they should sell, the several agreements between them and the Guild were confined to the imposition of differential prices and terms against outsiders. These agreements were made by the Refiners on the condition that not more than  $\frac{1}{4}$  cent per pound advance should be charged on granu-





lated by the wholesale, to the retail dealer, on lots of 15 barrels or over, and  $\frac{3}{8}$  cent advance on smaller lots. This they stipulated with the Guild should be the maximum profit.

The advance proposed and contended for by the Guild was higher, viz., under 15 barrels  $\frac{1}{2}$  cent per pound advance, and for larger quantities  $\frac{3}{8}$  cent advance.

The Guild made strenuous efforts to induce the refiners to refuse to sell their products to non-signers, failing in this they endeavoured to obtain a discrimination of one cent per pound against them.

They urged, next, that non-signers should be compelled to buy two barrels of 10 yellow sugar with every one of granulated, and they succeeded temporarily. This was a condition superadded to the  $\frac{1}{8}$  cent per pound increase of price, and also the loss of the usual discount which was  $2\frac{1}{2}$  per cent.

A list of names of firms in the agreement was furnished to all the Refiners. The original signers numbered 98, which included 14 firms who were both wholesale and retail dealers. At a meeting of the Guild on the 16th November, 1887, these 14 firms were summarily, and without notice of such intention, struck off the list, and thus deprived of the right to purchase except on non-signers' terms.

The Executive Committee of the Guild met weekly to fix prices at which all grades of white sugar should be sold to the retailers, subject to the arrangement 20 with the Refiners as before mentioned. The penalty for non-compliance was the removal of the name of the delinquent firm from the list supplied to the Refiners.

Members of the Guild were solemnly pledged to maintain these prices as well as other regulations of the Guild, under pain of expulsion. They were also "held bound in honour to keep strictly confidential all discussions and transactions of the association when in executive session." The subscribers to the sugar and other agreements were required to "covenant and agree to faithfully and honourably perform and carry out the terms and conditions set forth."

The Guild also entered into agreements with manufacturers of Tobacco, Starch and Cook's Friend Baking Powder, under which prices for these goods to the retailer 30 were fixed by the Guild, and enforced under penalty of being deprived of right to purchase except at higher prices.

These agreements were found to be made with individual manufacturers only, and that no combination existed among manufacturers of similar goods. Terms were also agreed upon with the agents of Morton's and Cross and Blackwell's Pickles, James' Dome Lead, Laundry Blue, etc., and Nestle's Food, under which wholesalers were required by the English manufacturers to maintain the prices fixed by them for sales to retailers.



The minutes of the meetings of the Guild show that an effort was made to control the product of the Mount Royal Mills. This resolution reads as follows:—

“ That inasmuch as rice, the products of Mount Royal Mills, has been and is being sold at unremunerative prices, this meeting recommends that the question of fixing a minimum advance on that article of  $\frac{3}{8}$  cent per pound on mill prices when sold in quantities of 25 bags and under be considered by the respective Guilds at an early date, and their views submitted through their delegates at the next meeting of the Dominion Guild.”

The minutes of the last meeting of the Guild show that an effort was being made to effect a combination of two of the Starch manufacturers of the Dominion. The resolution is as follows:—

“ Provided the Edwardsburg and British American Starch Companies sell to the wholesale trade only and make uniform prices and support the wholesale trade in a minimum advance to the retail trade of one-half cent per pound on common laundry, three-quarters of a cent on all others except rice starch, on which the advance shall be one cent, they agree not to sell the manufacturers of any other starch company who, on being asked to join, refuse to do so upon the same terms.”

Thus facts prove this Grocers' Guild, with its several combinations, to be obnoxious to the public interest, in limiting competition, in enhancing prices, and by the familiar use of its growing and facile powers tending to produce and propagate all the evils of monopoly. Certain dealers are refused admission into its ranks, others are admitted and afterwards expelled, others again are placed under its ban, who, from conscientious scruples or in a spirit of independence, refuse to join them. Merchants who have been buyers on equal terms and with equal facilities as other merchants, suddenly find themselves under the power of this combination.

Thus establishments, which in some cases are the growth of half a century of toil and honourable dealing, and rich in valuable experience and public confidence, are threatened with extinction. No reasonable excuse, much less justification, exists for many of these arbitrary acts and agreements. The wholesale grocery trade had been for many years in a flourishing condition; failures were almost unknown. The alleged demoralization of the sugar trade was but the same condition of this trade that had existed for many years owing to the custom of selling sugar at a low rate of profits. The reason given for fixing prices on many other articles was that they were being sold at too small a rate of profit. Fixed profits were agreed upon and afterwards increased, and in no instance lowered, though values generally had fallen.





It was seen that an association formed at first to arrange uniform terms of credit and discounts, and to prevent the dating ahead of invoices, etc., soon and rapidly extended its operations to more ambitious schemes. The power used, cautiously at first, soon grasped with a firmer hand, and at length, "the simple plan that they may take, who have the power," governed the operations of these associations.

#### COAL COMBINATIONS

Combinations exist among Coal Dealers in Toronto, Ottawa, Montreal and London.

10 In Toronto a Coal Association has been in existence for some years, and in 1886 it was affiliated with the Toronto Board of Trade and designated as the Coal Section of this Board.

In this coal section there are some 56 members, about half a dozen of whom are importers, and the others retailers, who get their supplies from the former at 75 cents per ton less than the price charged the consumer. The affairs are managed by an executive committee, a majority of whom the constitution provides shall be importers. Hence the sources of the controlling power of the importers, who are in other respects a privileged class, as their recorded minutes show that almost all the immense advantages of the combination accrue to their benefit.

20 The cost of acquiring a membership in this coal section is one hundred dollars, paid into the funds of the Board of Trade, and twenty dollars to the coal section, in all \$120.

This section has its distinct constitution, by-laws and regulations, which in order to be operative require the sanction of the Council of the Board of Trade. The copy of its constitution and by-laws deposited with the Council and seeking its approval is not by any means identical with the copy deposited with us by the secretary of the coal section. This difference is wide, the latter having *one* clause in the constitution and eight special rules not found in the former. The most arbitrary rules are enacted. Detectives are employed and the dealers placed under surveil-  
30 lance—oaths of fidelity to the constitution and rules are required not only of the members, but also of their salesmen, and the oaths in the cases of these employees are made in some instances retroactive as well as prospective. All violations of oaths are adjudicated upon by the executive committee referred to, the penalties being heavy fines or expulsion. One sixth of all fines goes into the general funds of the coal branch and the remaining five-sixths are divided amongst the importers. The record shows three different fines imposed of \$1,000 each.

Thus the public is presented with the extraordinary spectacle of a mercantile association arrogating to itself powers conferred upon Law Courts alone, with, in





this instance, the judges in the case virtually condoning perjury by the acceptance of fines to be divided amongst the importers. This phenomenon is not the less painful or less objectionable in character, from the association which perpetrates it being distinguished by the respectable title of "The Coal Branch of the Toronto Board of Trade."

Their management of public tenders is worthy of attention as an illustration of how popular confidence is betrayed. When tenders are asked for supplying coal in Toronto for Dominion Government Buildings, Ontario Government institutions, Toronto Water-Works, Public Schools, Charitable institutions, the General Hospital, etc., a meeting of the "Coal Branch" is called and the price is fixed which the party inviting tenders is to pay, and the privilege of filling the contract is awarded to the member who offers the highest premium or bonus. For instance, in 1886 for the privilege of filling the Ontario Government contract of about 2,500 tons, a premium of \$1,500 was paid. The same contract, including some wood, was sold in 1887 for \$1,399. The premiums thus paid are divided among the importing members in the same way as the fines. But in order to lull public suspicion of a combination, and that the parties to be supplied were not obtaining the coal at its fair market value, other members of the Branch put in tenders at higher prices.

Citizen consumers in like manner pay, not competitive prices, but such fixed prices as the combination chooses to extort.

In accordance with arrangements made with the American coal dealers, those who were in default in membership, either from inability to pay fines or from other causes, were prevented from purchasing coal in the United States. The possibility of competition by outsiders or non-members is also carefully guarded against. American miners and exporters are prohibited by the Toronto coal section from shipping to anyone in Toronto who is not in the combination. For example, the Butler Colliery Company of Buffalo sold a schooner load of 254 tons of anthracite coal to Gooderham & Worts without obtaining the consent of the Toronto coal section. The latter body at once telegraphed the Buffalo association to have further shipments stopped and a heavy fine inflicted on the offenders. The subsequent proceedings are described in the following abstract from the minutes of the coal section of the Toronto Board of Trade.

Resolved, That the matter of the shipments by the Butler Colliery Company to Gooderham & Worts be left in the hands of the Toronto Committee in Buffalo, to be dealt with as the importance of the case demands, and it is further resolved, that as the Butler Colliery Company have indicated their willingness to make reparation for the damage done this market through the shipment of coal to Gooderham & Worts, contrary to the rules of this association, this committee are of the opinion that several thousand dollars would not be sufficient to undo the mischief, as the



coal has been distributed among a large circle of friends and connections who freely informed their friends that they had succeeded in beating the coal ring and have got their coal at a large reduction from ring prices. However, in view of the prompt offer of the Butler Colliery Company, the Coal Trade Branch of the Toronto Board of Trade are to be as reasonable as possible in their demands, and will accept \$1,000 as full satisfaction in this instance, and that the Secretary be instructed to forward a copy of this resolution to the Secretary of the Toronto Committee at Buffalo.

The coal organization of Ottawa was formed on a more scientific, but not less effective plan than that last described, though dispensing with oaths and fines. The 10 plan is copied from the American System of Trusts. An incorporated company was formed called the "Ottawa Coal and Cartage Company." Three of the coal dealers are members of this company, and most of the others became affiliated with it. The Cartage Company transacted all the business except booking the orders and receiving the cash. They received the coal, brought it to the coal yards and distributed it to the consumers. The retail price was fixed by the combination. At the beginning of the season a certain percentage of the net profits was agreed upon as the share of each dealer, and whether he sold coal or not, his profits were certain. The Cartage Company last year, after paying all expenses and the percentages or bonuses to the affiliated members, divided more than \$33,000 profits among the 20 three shareholders, on a share capital of \$15,000.

In Montreal and London combinations also exist to keep up prices and control the market. These appear to be less oppressive than in Toronto and Ottawa, though equally objectionable in principle.

In Cobourg no combination exists. The best quality of coal is sold there at much lower prices than in Toronto, though the freight rates are almost identical.

#### AGRICULTURAL IMPLEMENTS

The evidences of Mr. H. A. Massey of Toronto, Mr. Copp of Hamilton, and Mr. A. W. Morris of Montreal, was conclusive to the effect that no combination exists among the manufacturers of Agricultural Implements.

30

#### BARLEY

Mr. W. D. Mathews, President of the Toronto Board of Trade, testified that no combination exists among the purchasers of barley.

#### BARBED WIRE

An attempt was made during the past winter by the Barbed Wire manufacturers to secure uniform prices for their product. The agreement the retailer was asked to sign, bound him to sell at 6½ cents per pound, the inducement being that he could purchase at 5¼ cents, which was a reduction of ¼ of a cent from last year's price.





## COFFIN MAKERS AND UNDERTAKERS

The Coffin manufacturers and dealers in Undertakers' supplies have agreed with the Undertakers' Association to sell only to members of that organization. To become a member requires the assent of the three nearest Undertakers, and afterwards the consent of two-thirds of the executive committee. It is easily seen that this consent cannot readily be obtained, and as a consequence it is extremely difficult and generally impossible for a man to commence the business of an undertaker, as the association controls not only the sale of coffins and caskets, but also all fittings and Undertakers' supplies of every description. This combination is extensive in  
 10 its operations, most arbitrary in character, and exercises an unjustifiable interference with personal freedom. As in other combinations, its members are dealt with by fines and expulsions.

The inevitable result of this exclusive control is exorbitant charges to bereaved families; and wherever the hand of affliction most frequently falls the more oppressive the burden of this combination becomes.

## MANUFACTURERS OF CORDAGE AND BINDING TWINE

This combination includes five firms engaged in the manufacture of the above goods:—

- 20     The John A. Converse works in Montreal.
- R. Bannerman & Brother, Montreal.
- John Brown & Co., Quebec.
- Dartmouth Rope Works, Halifax, N.S.
- Thos. Connor & Son, St. John, N.B.

These five factories control a large portion of this business in the Dominion, and have a capacity for manufacturing about twice the amount of binder twine consumed in Canada. There are some other factories not in the combination.

Another establishment for making binder twine, and not in the combination, started in Brantford in 1887. It is capable of turning out 500 tons per annum, or about 20 per cent of the total amount hitherto required in this country.

- 30     The combination was first formed in November, 1884, and continued until May, 1887. It was then broken up, but reorganized in the following August. It was formed on the pooling plan, and was an agreement between the five firms named above, by which uniform prices were established, subject to change from time to time, and a percentage of the total sales within the Dominion allotted to each firm. Those manufacturing more than their percentage paid one and a half cents per pound on the excess into the pool, which was divided among those selling less than their allotted percentage. The effect of this arrangement was to secure uniformity





of prices in binder twine, and avoid over-production. It is claimed that it also had the effect of raising the standard of quality. The evidence also shows that prices paid in Canada are no higher than in United States and Great Britain. The increased prices of both rope and binder twine in 1887 was accounted for by the advance in raw material which advanced from £25 to £42 per ton. This was the result of the operations of an American syndicate, who have obtained control of the crop of manila in all parts of the world. This combination terminated in April last, since the investigation began.

#### THE CANADIAN IRON FOUNDERS' ASSOCIATION

10 This association was formed in 1865, and has continuously existed since that date; it now numbers 18 firms. Outside of the association there are about 40 manufacturers of the same goods, some of whom are large manufacturers, but the majority are small firms. The principal object of the association was "the fixing of a general uniform sale for stoves and other foundry wares." In 1875 resolutions were passed ordering a deposit of \$100 by each member of the association, "which amount," the resolution reads, "shall be forfeited by any member who shall be guilty of an infraction of prices as adopted by this association"; and appointing a grievance committee of three, whose duties "shall be to investigate all charges referred to them, and whose decision in all cases shall be final; and should the committee fail  
20 to forthwith investigate any charges referred to them by the president, they shall each forfeit the sum of \$100." Also, "that it shall be the duty of each member of the association to notice any and all infractions of prices, and on satisfactory evidence to enter a charge by giving notice to the president who shall at once place the matter in the hands of the committee."

The following form of agreement was also adopted at the same meeting in 1875: "We, the undersigned members, do hereby pledge our word of honour that we will strictly adhere to prices, terms and rules as stated in the foregoing report adopted by the association, both in letter and in spirit, and will hold ourselves responsible for ourselves, our firms, and our agents: and should a charge be sustained  
30 against either of our respective firms we individually agree to abide by the decision of the committee and will not in consequence of such decision refuse to abide by the award. Nor will we withdraw from the association or claim any moneys forfeited by us." At a meeting in 1877 it was resolved that any member of this association be empowered to offer and pay the sum of \$50 to any customer who may furnish satisfactory written proof from the seller that any member had given better terms than those authorized by the association, said \$50 to be paid from the funds.



These provisions for fines, forfeitures and pledges were reaffirmed and strengthened in subsequent years.

At a meeting held in March, 1876, by resolution it was ordered, "that members were to keep secret the transactions of the association from Iron Founders, not members, and from all dealers." Price lists were established annually since the foundation of the association, with occasional modifications during the year at special meetings.

The evidence of J. R. Esmonde and F. T. Graves, stove dealers of Ottawa, H. R. Ives, stove founder of Montreal, who is not a member of the association, and 10 W. J. Copp, substantially agree that the operations of this combination had not resulted in unduly raising prices of goods affected by the combination, which were principally stoves of all grades. The evidence of these witnesses also show that the better class of these stoves was not higher in Canada than similar goods in the United States. On a low class of stoves free from ornamentation which were made in the vicinity of the iron furnaces and coal mines there, the prices ranged lower than in Canada. On base burners Mr. Copp stated the prices were 10 per cent lower in Canada than in the United States. Increased prices in late years were attributed to advance in wages and raw material, and increased ornamentation.

#### OATMEAL MILLERS' ASSOCIATION

20 This association was recently formed for the purpose of sustaining the price of oatmeal, and as far as possible regulating the purchase price of oats.

There are twenty-four mills in the combination, including the largest mills in Ontario. They have also closed up ten other mills, the owners of which are paid sums varying from \$300 to \$800 per annum, or a total of \$6,312 annually, a sum necessarily taken out of the extra profits, which sums are paid them by the association for non-production.

The mills not in the association, numbering about twenty-five, are of such limited capacity for production, that their influence is not materially felt in the general market, but they avail themselves of whatever advantage the combination 30 gives them to keep up prices.

A certain percentage of the oatmeal production is allotted to each mill, and upon every barrel sold by any miller in excess of this allotment, he pays a premium of 30 cents per barrel into the association, and vice versa when any miller falls short of his allotment he receives an equal premium per barrel upon the quantity short.





## BISCUITS AND CONFECTIONERY

Separate organizations exist in these products among a large number of the leading manufacturers in the provinces of Ontario and Quebec. A number of manufacturers—but they are the smaller ones—are not members. The principal object is to maintain prices.

The Biscuit Association has been in existence about six years, and although the prices of the ingredients used have in that time very materially decreased, the prices of biscuits have remained about the same.

From the evidence, it seems clear that the result of the combination is to keep 10 prices at higher figures than are justified by the prices paid for the raw material, and altered conditions of trade, brought about by the introduction of new and improved machinery.

It was found by comparison with United States price lists, that Canadian goods are in some finer and fancy varieties 20 to 30 per cent higher than goods of equal quality on the other side of the line.

The Confectionery Association is of recent formation, and the usual result following at once, viz., a rise in the prices.

## FIRE INSURANCE

The evidence discloses the existence of a powerful association for the purpose 20 of raising and maintaining rates of insurance. This combination was formed in 1883 and includes nearly all the stock companies, English, American and Canadian doing business in Canada. Sums varying from \$600 to \$1,000 are paid annually by each of the thirty-two companies into the association. The individual companies are pledged to maintain rates, and if any cutting is discovered the offending company is compelled to cancel the policy. No schedule of rates is fixed for farm or isolated risks. Owing to the competition of the mutual companies it was found impossible to control this line of business. Agents were required to sign an agreement not to do business for companies outside the association, but for some reason this plan was repealed by the General Association, but was again adopted by the Toronto Board 30 with which it is still in force.

No reinsurance will be accepted from any non-tariff company, nor placed with such company unless it is found impossible to place within the association.

The effects upon the insuring public have been decidedly injurious. It extends its operations to every portion of the Dominion, and higher rates have been the rule in nearly every instance.



Owing to the arbitrary character of the tariff and the rules adopted, little account can be taken of the moral hazard, i.e., the circumstances, necessities or reputation of applicants.

In consequence of these conditions a large number of first-class risks in Canada, and involving large amounts, are placed with companies in the United States, not having offices in Canada, nor amenable to Canadian laws.

Another tangible effect of a combination for the regulation of rates, is that rates being equal in all companies, the tendency is, for insurers to place their risks either abroad or with foreign companies doing business in Canada, and possessed  
10 of larger capital and of longer standing than the native companies. This is rapidly tending towards the freezing out of the purely Canadian Insurance Companies, and opens up no very bright prospect for the shareholders whose money is invested in Canadian joint stock insurance.

#### THE EGG COMBINATION

This combination is of recent origin and is composed of the leading dealers in Ontario who buy for export. Their operations ramify throughout the province of Ontario. The object of the combination is by keeping prices low in the principal cities to lower prices in the rural sections. Agents appointed by the association in the cities, will use supplies to force down the prices for home consumption. This  
20 will react in favour of their buyers in the country, who will thus buy cheaper for export. In localities where a rival buyer is found, a powerful ring can easily outbid him until he is driven out of the business and the field left without a competitor, with the natural result.

The Committee find that the evils produced by combinations such as have been inquired into, have not by any means been fully developed as yet in this country, but sufficient evidence of their injurious tendencies and effects is given to justify legislative action for suppressing the evils arising from these and similar combinations and monopolies.

The evidence given before the Committee and the accompanying exhibits are  
30 as a portion of this report respectfully submitted.

N. CLARKE WALLACE,  
*Chairman of Committee.*





1889

# AN ACT FOR THE PREVENTION AND SUPPRESSION OF COMBINATIONS FORMED IN RESTRAINT OF TRADE

52 Victoria, c. 41

*Assented to 2nd May, 1889*

Preamble.

WHEREAS it is expedient to declare the law relating to conspiracies and combinations formed in restraint of trade and to provide penalties for the violation of the same: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, declares and enacts as follows:—

Combining  
for the  
purpose of  
unlaw-  
fully—

Limiting  
facilities  
for trans-  
portation,  
&c.  
Restraining  
commerce.

Limiting  
production,  
&c.

Hindering  
competi-  
tion.

Punish-  
ment.

10 **1.** Every person who conspires, combines, agrees or arranges with any other person, or with any railway, steamship, steamboat or transportation company, unlawfully,

(a) To unduly limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity which may be a subject of trade or commerce; or—

(b) To restrain or injure trade or commerce in relation to any such article or commodity; or—

(c) To unduly prevent, limit, or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance the price thereof; or—

20

(d) To unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity, or in the price of insurance upon person or property,—

Is guilty of a misdemeanor and liable, on conviction, to a penalty not exceeding four thousand dollars and not less than two hundred dollars, or to imprisonment for any term not exceeding two years; and if a corporation, is liable on conviction to a penalty not exceeding ten thousand dollars and not less than one thousand dollars.

Evidence.

30 **2.** In any prosecution under this Act the person accused shall be a competent witness on his own behalf.

S. 140 of  
R.S.C., c.  
174,  
amended.

**3.** Section one hundred and forty of "The Criminal Procedure Act," is hereby amended by adding to the list of offences therein mentioned the offences provided against in this Act.



Option as  
to mode  
of trial.

4. Where an indictment is found against any person for offences provided against in this Act, the defendant or person accused shall have the option to be tried before the judge presiding at the court at which such indictment is found, or the judge presiding at any subsequent sitting of such court, or at any court where the indictment comes on for trial, without the intervention of a jury; and in the event of such option being exercised the proceedings subsequent thereto shall be regulated in so far as may be applicable by "The Speedy Trials Act."

Appeal if  
case is  
tried with-  
out a jury.

5. An appeal shall lie from any conviction under this Act by the judge without the intervention of a jury to the highest court of appeal in criminal matters in the province where such conviction shall have been made, upon all issues of law and fact, and the evidence taken in the trial shall form part of the record in appeal, and for that purpose the court before which the case is tried shall take note of the evidence and of all legal objections thereto.

How Act  
shall be  
construed.  
R.S.C., c.  
131.

6. The foregoing provisions of this Act shall be construed as if section twenty-two of "The Trade Unions Act" had not been enacted.





1892

## CRIMINAL CODE, SECTIONS 516, 517, 520

55-56 Victoria, c. 29

*(Act of 1889 as revised and incorporated in Criminal Code, 1892)*

Conspira-  
cies in  
restraint  
of trade.

**516.** A conspiracy in restraint of trade is an agreement between two or more persons to do or procure to be done any unlawful act in restraint of trade.

What acts  
done in  
restraint of  
trade are  
not unlaw-  
ful.

**517.** The purposes of a trade union are not, by reason merely that they are in restraint of trade, unlawful within the meaning of the next preceding section. R.S.C., c. 131, s. 22.

Combina-  
tions in  
restraint  
of trade.

10 **520.** Every one is guilty of an indictable offence and liable to a penalty not exceeding four thousand dollars and not less than two hundred dollars, or to two years' imprisonment, and if a corporation is liable to a penalty not exceeding ten thousand dollars and not less than one thousand dollars, who conspires, combines, agrees or arranges with any other person, or with any railway, steamship, steamboat or transportation company, unlawfully—

- 20
- (a) to unduly limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity which may be a subject of trade or commerce; or
  - (b) to restrain or injure trade or commerce in relation to any such article or commodity; or
  - (c) to unduly prevent, limit, or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance the price thereof; or
  - (d) to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity, or in the price of insurance upon person or property. 52 V., c. 41, s. 1.



1899

## CRIMINAL CODE AMENDMENT ACT

62-63 Victoria, c. 46

*Assented to 11th August, 1899.*

An Act to amend the Criminal Code, 1892, with respect to Combinations in  
Restraint of Trade

HER MAJESTY, by and with the advice and consent of the Senate and House of  
Commons of Canada, enacts as follows:—

1892, c. 29,  
s. 520  
amended.

1. Section 520 of *The Criminal Code*, 1892, is hereby amended by striking  
10 out the word “unduly” in paragraphs (a), (c) and (d), and by striking out the  
word “unreasonably” in paragraph (c).





1900

## CRIMINAL CODE AMENDMENT ACT, 1900

63-64 Victoria, c. 46

*Assented to 18th July, 1900*

An Act further to amend the Criminal Code, 1892

HER MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short title.

**1.** This Act may be cited as *The Criminal Code Amendment Act, 1900*.

Coming into force.

**2.** This Act shall come into force on the first day of January, 1901.

1892, c. 29 amended.

**3.** *The Criminal Code, 1892*, is amended in the manner set forth in the following schedule:—

Section **520**. By substituting the following therefor:—

“**520**. Every one is guilty of an indictable offence and liable to a penalty not exceeding four thousand dollars and not less than two hundred dollars, or to two years' imprisonment, or, if a corporation, is liable to a penalty not exceeding ten thousand dollars and not less than one thousand dollars, who conspires, combines, agrees or arranges with any other person, or with any railway, steamship, steamboat or transportation company—

20

- (a) to unduly limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity which may be a subject of trade or commerce; or,
- (b) to restrain or injure trade or commerce in relation to any such article or commodity; or,
- (c) to unduly prevent, limit, or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance the price thereof; or,
- (d) to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity or in the price of insurance upon person or property.

**2.** Nothing in this section shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees.



1927

CRIMINAL CODE, SECTIONS 496, 497, 498 <sup>1</sup>

R.S.C., 1927, c. 36

Conspiracy  
in restraint  
of trade.

**496.** A conspiracy in restraint of trade is an agreement between two or more persons to do or procure to be done any unlawful act in restraint of trade. R.S., c. 146, s. 496.

Acts in  
restraint  
not  
unlawful.

**497.** The purposes of a trade union are not, by reason merely that they are in restraint of trade, unlawful within the meaning of the last preceding section. R.S., c. 146, s. 497.

Penalty for  
conspiracy. 10

**498.** Every one is guilty of an indictable offence and liable to a penalty not exceeding four thousand dollars and not less than two hundred dollars, or to two years' imprisonment, or, if a corporation, is liable to a penalty not exceeding ten thousand dollars, and not less than one thousand dollars, who conspires, combines, agrees or arranges with any other person, or with any railway, steamship, steamboat or transportation company.

To limit  
transporta-  
tion  
facilities.

(a) to unduly limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity which may be a subject of trade or commerce; or

Restrain  
commerce. 20

(b) to restrain or injure trade or commerce in relation to any such article or commodity; or

Lessen  
manufac-  
turing.

(c) to unduly prevent, limit, or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance the price thereof; or

Lessen  
competi-  
tion.

(d) to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity, or in the price of insurance upon person or property.

Saving.

2. Nothing in this section shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees. R.S., c. 146, s. 498.

<sup>1</sup> These sections are the same as sections 496, 497 and 498 of the Criminal Code in the Revised Statutes of 1906. Prior to the revision of 1906 they appeared in the Criminal Code as Sections 516, 517 and 520.





1897

THE CUSTOMS TARIFF—SECTION 18 <sup>1</sup>

60-61 Victoria, c. 16

*Assented to 29th June, 1897*

Trusts and  
combines,  
commis-  
sioners to  
inquire  
into.

**18.** Whenever the Governor in Council has reason to believe that with regard to any article of commerce there exists any trust, combination, association or agreement of any kind among manufacturers of such article or dealers therein, to unduly enhance the price of such article or in any other way to unduly promote the advantage of the manufacturers or dealers at the expense of the consumers, the  
10 Governor in Council may commission or empower any judge of the Supreme Court or Exchequer Court of Canada, or of any superior court in any province of Canada, to inquire in a summary way into and report to the Governor in Council whether such trust, combination, association or agreement exists.

Powers of  
commis-  
sioner.

2. The judge may compel the attendance of witnesses and examine them under oath and require the production of books and papers, and shall have such other necessary powers as are conferred upon him by the Governor in Council for the purposes of such inquiry.

His report  
and action  
thereupon.

3. If the judge reports that such trust, combination, association or agreement exists, and if it appears to the Governor in Council that such disadvantage to the  
20 consumers is facilitated by the duties of customs imposed on a like article, when imported, then the Governor in Council shall place such article on the free list, or so reduce the duty on it as to give to the public the benefit of reasonable competition in such article.

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<sup>1</sup> In the Revised Statutes of 1906 this section appeared, without change, as Section 18 of chapter 49.



1907

THE CUSTOMS TARIFF—SECTIONS 12 AND 14 <sup>1</sup>

6-7 Edward VII, c. 11

*Assented to 12th April, 1907*

Combines  
and con-  
spiracies.

**12.** Whenever, from or as a result of a judgment of the Supreme Court or Exchequer Court of Canada, or of any superior court, or circuit, district or county court in Canada, it appears to the satisfaction of the Governor in Council that with regard to any article of commerce there exists any conspiracy, combination, agreement or arrangement of any kind among manufacturers of such articles or  
10 dealers therein to unduly promote the advantage of the manufacturers or dealers at the expense of the consumers, the Governor in Council may admit the article free of duty, or so reduce the duty thereon as to give the public the benefit of reasonable competition in the article, if it appears to the Governor in Council that such disadvantage to the consumer is facilitated by the duties of Customs imposed on a like article.

Powers of  
Governor  
in Council.

Inquiry  
by judge.

2. Whenever the Governor in Council deems it to be in the public interest to inquire into any conspiracy, combination, agreement or arrangement alleged to exist among manufacturers or dealers in any article of commerce to unduly promote the advantage of the manufacturers or dealers in such article at the expense of the  
20 consumers, the Governor in Council may commission or empower any judge of the Supreme Court, or of the Exchequer Court of Canada, or of any superior court or county court in Canada, to hold an inquiry in a summary way and report to the Governor in Council whether such conspiracy, combination, agreement or arrangement exists.

Evidence.

3. The judge may compel the attendance of witnesses and examine them under oath and require the production of books and papers, and shall have such other necessary powers as are conferred upon him by the Governor in Council for the purpose of such inquiry.

Report of  
judge.  
Powers of  
Governor  
in Council  
therefrom.

4. If the judge reports that such conspiracy, combination, agreement or  
30 arrangement exists in respect of such article, the Governor in Council may admit the article free of duty, or so reduce the duty thereon as to give to the public the benefit of reasonable competition in the article, if it appears to the Governor in Council that such disadvantage to the consumer is facilitated by the duties of Customs imposed on a like article.

R.S., c. 49  
repealed.

**14.** *The Customs Tariff*, chapter 49 of the Revised Statutes, 1906, is repealed.

<sup>1</sup> Subsection 1 of Section 12 was repealed by the Combines Investigation Act of 1910 (9-10 Edward VII, c. 9, s. 47), but was incorporated in the latter statute, in amended form, as Section 21. Subsections 2, 3 and 4 appear in the Revised Statutes of 1927 as Section 15 of chapter 44.





1904

## AN ACT TO AMEND THE INLAND REVENUE ACT

4 Edward VII, c. 17

*Assented to 10th August, 1904*

HIS MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

R.S.C., c.  
34, New  
section.

1. The Inland Revenue Act, chapter 34 of the Revised Statutes, is amended by inserting the following section immediately after Section 96:—

License to  
be forfeited  
in case of  
sale or con-  
signment of  
goods under  
restrictive  
conditions.

“**96A.** <sup>1</sup> The Minister of Inland Revenue may declare forfeited any license authorized by this Act in any case where a person who, being a manufacturer of any class of goods subject to a duty of excise, either directly or indirectly—

“(a) makes a sale of any such goods, or consigns them for sale upon commission, to another person, subject to the condition that the purchaser or the consignee shall not sell or deal in goods of a like kind produced by, or obtained or to be obtained from, any other manufacturer or dealer; or

“(b) makes a sale of any such goods, or consigns them for sale upon commission, to another person, upon such terms as would, in their application, give more profit to the purchaser or the consignee if he should not sell or deal in goods of a like kind produced by, or obtained or to be obtained from, any other manufacturer or dealer,

Notice of  
forfeiture.

20 “and the collector of inland revenue shall thereupon cause a notice of such forfeiture to be forthwith inserted in *The Canada Gazette*, and from and after the insertion thereof the license shall be null and void; and no new license shall be granted to such person, and no license shall be granted to any other person for carrying on any business in the premises occupied by him until the Minister of Inland Revenue is satisfied that the dealings above referred to have ceased.

Conse-  
quences of  
forfeiture.

Decision  
of Minister  
to be final.

“2. The decision of the Minister of Inland Revenue as to whether any sale or consignment of goods is, or is not, subject to any such conditions, or upon any such terms, as is or are defined in subsection 1 of this section, shall be final.”

<sup>1</sup> This section, unchanged, became Section 32 of chapter 51 of the *Revised Statutes of 1906*. It appears, slightly changed, as Section 27 of the *Excise Act*, R.S.C. 1927, c. 60.



1910

## THE COMBINES INVESTIGATION ACT

9-10 Edward VII, c. 9

*Assented to 4th May, 1910*

An Act to provide for the investigation of Combines,  
Monopolies, Trusts and Mergers.

HIS Majesty, by and with the advice and consent of the  
Senate and House of Commons of Canada, enacts as  
follows:—

1. This Act may be cited as *The Combines Investigation Act*. Short title.

## INTERPRETATION.

2. In this Act, unless the context otherwise requires,— Definitions.

(a) "application" means an application to a judge for an order directing an investigation under the provisions of this Act; "Application."

(b) "Board" means a Board of Investigation established under the provisions of this Act; "Board."

(c) "combine" means any contract, agreement, arrangement or combination which has, or is designed to have, the effect of increasing or fixing the price or rental of any article of trade or commerce or the cost of the storage or transportation thereof, or of the restricting competition in or of controlling the production, manufacture, transportation, storage, sale or supply thereof, to the detriment of consumers or producers of such article of trade or commerce, and includes the acquisition, leasing or otherwise taking over, or obtaining by any person to the end aforesaid, of any control over or interest in the business, or any portion of the business, of any other person, and also includes what is known as a trust, monopoly or merger; "Combine."

(d) "Department" means the Department of Labour; "Department."

(e) "judge" means, in the province of Ontario, any judge of the High Court of Justice; in the province of Quebec, any judge of the Superior Court; in the provinces of Nova Scotia, New Brunswick, British Columbia, Prince Edward Island, Sas- "Judge."





katchewan and Alberta, any judge of the Supreme Court; in the province of Manitoba, any judge of the Court of King's Bench, and in the Yukon territory, any judge of the Territorial Court;

- "Minister." (f) "Minister" means the Minister of Labour;  
 "Order." (g) "order" means an order of a judge under the provisions of this Act;  
 "Prescribed." (h) "prescribed" means prescribed by this Act, or by any rule or regulation made thereunder;  
 "Registrar." (i) "Registrar" means the Registrar of Boards of Investigation appointed under this Act.

#### ADMINISTRATION.

Adminis- **3.** The Minister shall have the general administration of  
 tration. this Act.

Registrar of **4.** The Governor in Council shall appoint a Registrar of  
 Boards. Boards of Investigation, who shall have the powers and perform the duties prescribed.

Appointment **2.** The office of Registrar may be held either separately or  
 and tenure of in conjunction with any other office in the public service, and  
 office. in the latter case the Registrar may, if the Governor in Council thinks fit, be appointed by reference to such other office, whereupon the person who for the time being holds such office or performs its duties shall, by virtue thereof and without thereby being entitled to any additional remuneration, be the Registrar.

#### ORDER FOR INVESTIGATION.

Order for **5.** Where six or more persons, British subjects resident in  
 investigation. Canada and of full age, are of opinion that a combine exists, and that prices have been enhanced or competition restricted by reason of such combine, to the detriment of consumers or producers, such persons may make an application to a judge for an order directing an investigation into such alleged combine.

Application **2.** Such application shall be in writing addressed to the  
 for order. judge, and shall ask for an order directing an investigation into the alleged combine, and shall also ask the judge to fix a time and place for the hearing of the applicants or their representative.

Form of **3.** The application shall be accompanied by a statement  
 application. setting forth,—

(a) the nature of the alleged combine and the persons believed to be concerned therein;

(b) the manner in which the alleged combine affects prices or restricts competition, and the extent to which the alleged combine is believed to operate to the detriment of consumers or producers;



(c) the names and addresses of the parties making the application and the name and address of one of their number or of some other person whom they authorize to act as their representative for the purposes of this Act and to receive communications and conduct negotiations on their behalf.

4. The application shall also be accompanied by a statutory declaration from each applicant declaring that the alleged combine operates to the detriment of the declarant as a consumer or producer, and that to the best of his knowledge and belief the combine alleged in the statement exists and that such combine is injurious to trade or has operated to the detriment of consumers or producers in the manner and to the extent described, and that it is in the public interest that an investigation should be had into such combine. Declaration of applicants.

6. Within thirty days after the judge receives the application he shall fix a time and place for hearing the applicants and shall send due notice, by registered letter, to the representative authorized by the statement to receive communications on behalf of the applicants. At such hearing the applicants may appear in person or by their representative or by counsel. Hearing of application.

7. If upon such hearing the judge is satisfied that there is reasonable ground for believing that a combine exists which is injurious to trade or which has operated to the detriment of consumers or producers, and that it is in the public interest that an investigation should be held, the judge shall direct an investigation under the provisions of this Act; or if not so satisfied, and the judge is of opinion that in the circumstances an adjournment should be ordered, the judge may adjourn such hearing until further evidence in support of the application is given, or he may refuse to make an order for an investigation. Order for investigation by judge.

2. The judge shall have all the powers vested in the court of which he is a judge to summon before him and enforce the attendance of witnesses, to administer oaths, and to require witnesses to give evidence on oath or on solemn affirmation (if they are persons entitled to affirm in civil matters), and to produce such books, papers or other documents or things as the judge deems requisite. Adjournment for further evidence.

8. The order of the judge directing an investigation shall be transmitted by him to the Registrar by registered letter, and shall be accompanied by the application, the statement, a certified copy of any evidence taken before the judge, and the statutory declarations. The order shall state the matters to be investigated, the names of the persons alleged to be concerned in the combine, and the names and addresses of one or more of their number with whom, in the opinion of the judge, the Minister should communicate in order to obtain the recommendation for the appointment of a person as a member of the Board as hereinafter provided. Powers of judge.

9. Transmission of order and evidence to Registrar.





## APPOINTMENT OF BOARDS.

Appointment  
of Board.

**9.** Upon receipt by the Registrar of the order directing an investigation the Minister shall forthwith proceed to appoint a Board.

Constitution  
of Board.

**10.** Every Board shall consist of three members, who shall be appointed by the Minister under his hand and seal of office.

Members  
of Board.

**11.** Of the three members of the Board one shall be appointed on the recommendation of the persons upon whose application the order has been granted, one on the recommendation of the persons named in the order as being concerned in the alleged combine, and the third on the recommendation of the two members so chosen.

Recommend-  
ation of third  
member.

**12.** The persons upon whose application the order has been granted and the persons named in the order as being concerned in the alleged combine, within seven days after being requested so to do by the Registrar, may each respectively recommend the name of a person who is willing and ready to act as a member of the Board, and the Minister shall appoint such persons members of the Board.

Communi-  
cations with  
representa-  
tives of  
parties.

2. For the purpose of obtaining the recommendations referred to in subsection 1 of this section it shall be sufficient, as respects the applicants, for the Registrar to communicate with the representative mentioned in the statement as authorized to receive communications on their behalf, and as respects the persons concerned in the alleged combine it shall be sufficient for the Registrar to communicate with the persons named in the order, as the persons with whom the Minister should communicate for this purpose.

When  
Minister may  
select  
members.

3. If the parties, or either of them, fail or neglect to make any recommendation within the said period, or such extension thereof as the Minister, on cause shown, grants, the Minister shall, as soon thereafter as possible, select and appoint a fit person or persons to be a member or members of the Board.

Recommend-  
ation and  
appointment  
of a judge as  
third  
member.

4. The two members so appointed may, within seven days after their appointment, recommend the name of a judge of any court of record in Canada who is willing and ready to act as a third member of the Board, and the Minister shall appoint such judge as a member of the Board, and if they fail or neglect to make a recommendation within the said period, or such extension thereof as the Minister on cause shown grants, the Minister shall, as soon thereafter as possible, select and appoint a judge of any court of record in Canada to be the third member of the Board.

Chairman.  
Vacancies.

5. The third member of the Board shall be its chairman.

6. A vacancy in the membership of a Board shall be filled in the same manner as an original appointment is made.



**13.** No person shall act as a member of the Board who is one of the applicants for the Board or who has any direct pecuniary interest in the alleged combine that is the subject of investigation by such Board, or who is not a British subject. Persons disqualified as members.

**14.** As soon as possible after all the members of the Board have been appointed by the Minister, the Registrar shall notify the parties of the names of the chairman and other members of the Board. Notice of personnel of Board.

**15.** Before entering upon the exercise of the functions of their office the members of the Board shall take the following oath:— Oath of office.

I, . . . . ., do solemnly swear,—

That I will truly, faithfully and impartially perform my duties as a member of the Board appointed to investigate. . . . .

That I am a British subject.

That I have no direct pecuniary interest in the alleged combine that is to be the subject of investigation.

That I have not received nor will I accept either directly or indirectly any perquisite, gift, fee or gratuity from any person in any way interested in any matter or thing to be investigated by the Board.

That I am not immediately connected in business with any of the parties applying for this investigation, and am not acting in collusion with any person herein.

**16.** The Department may provide the Board with a stenographer and such clerical and other assistance as to the Minister appears necessary for the efficient carrying out of the provisions of this Act. The Department shall also repay any reasonable and proper disbursements made or authorized and certified by the judge who grants the order directing the investigation. Clerical assistance to Board. Disbursements.

**17.** Upon the appointment of the Board the Registrar shall forward to the chairman copies of the application, statement, evidence, if any, taken before the judge, and order for investigation, and the Board shall forthwith proceed to deal with the matters referred to therein. Commencement of investigation

#### INQUIRY AND REPORT.

**18.** The Board shall expeditiously, fully and carefully inquire into the matters referred to it and all matters affecting the merits thereof, including the question of whether or not the price or rental of any article concerned has been unreasonably enhanced, or competition in the supply thereof unduly restricted, in consequence of a combine, and shall make a full and detailed report thereon to the Minister, which report shall set forth the various proceedings and steps taken by the Board for the purpose of fully and carefully ascertaining all the facts and Inquiry. Report to Minister.





circumstances connected with the alleged combine, including such findings and recommendations as, in the opinion of the Board, are in accordance with the merits and requirements of the case.

Scope of investigation.

2. In deciding any question that may affect the scope or extent of the investigation, the Board shall consider what is required to make the investigation as thorough and complete as the public interest demands.

Report of Board.

19. The Board's report shall be in writing, and shall be signed by at least two of the members of the Board. The report shall be transmitted by the chairman to the Registrar, together with the evidence taken at such investigation certified by the chairman, and any documents and papers remaining in the custody of the Board. A minority report may be made and transmitted to the Registrar by any dissenting member of the Board.

Minority report.

Publication of reports.

20. Upon receipt of the Board's report and of the minority report, if any, a copy thereof shall be sent free of charge to the parties and to the representative of any newspaper in Canada who applies therefor, and the report and minority report, if any, shall also be published without delay in *The Canada Gazette*. The Minister may distribute copies of the report, and of any minority report, in such manner as to him seems most desirable, as a means of securing a compliance with the Board's recommendations. The Registrar shall, upon payment of such fees as may be prescribed, supply a certified copy of any report or minority report to any person applying for it.

Distribution of copies.

Fee for certified copies.

Reduction of Customs duties to secure reasonable competition

21. Whenever, from or as a result of an investigation under the provisions of this Act, or from or as a result of a judgment of the Supreme Court or Exchequer Court of Canada or of any superior court, or circuit, district or county court in Canada, it appears to the satisfaction of the Governor in Council that with regard to any article there exists any combine to promote unduly the advantage of the manufacturers or dealers at the expense of the consumers, and if it appears to the Governor in Council that such disadvantage to the consumer is facilitated by the duties of customs imposed on the article, or on any like article, the Governor in Council may direct either that such article be admitted into Canada free of duty or that the duty thereon be reduced to such amount or rate as will, in the opinion of the Governor in Council, give the public the benefit of reasonable competition.

Revocation of patent in certain cases.

22. In case the owner or holder of any patent issued under *The Patent Act* has made use of the exclusive rights and privileges which, as such owner or holder he controls, so as unduly to limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article which may be a subject of



trade or commerce, or so as to restrain or injure trade or commerce in relation to any such article, or unduly to prevent, limit or lessen the manufacture or production of any article or unreasonably to enhance the price thereof, or unduly to prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation, storage or supply of any article, such patent shall be liable to be revoked. And, if a Board reports that a patent has been so made use of, the Minister of Justice may exhibit an information in the Exchequer Court of Canada praying for a judgment revoking such patent, and the court shall thereupon have jurisdiction to hear and decide the matter and to give judgment revoking the patent or otherwise as the evidence before the court may require.

Jurisdiction  
of Exchequer  
Court.

**23.** Any person reported by a Board to have been guilty of unduly limiting the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article which may be a subject of trade or commerce; or of restraining or injuring trade or commerce in relation to any such article; or of unduly preventing, limiting or lessening the manufacture or production of any such article; or of unreasonably enhancing the price thereof; or of unduly preventing or lessening competition in the production, manufacture, purchase, barter, sale, transportation, storage or supply of any such article, and who thereafter continues so to offend, is guilty of an indictable offence and shall be liable to a penalty not exceeding one thousand dollars and costs for each day after the expiration of ten days, or such further extension of time as in the opinion of the Board may be necessary, from the date of the publication of the report of the Board in *The Canada Gazette* during which such person so continues to offend.

Combines  
restricting  
manufacture,  
trade or  
competition.

Penalty.

#### SITTINGS OF BOARD.

**24.** The sittings of the Board shall be held at such times and places as are fixed by the chairman, after consultation with the other members of the Board, and the parties shall be notified by the chairman as to the times and places at which sittings are to be held: Provided that, so far as practicable, the Board shall sit in the locality within which the subject-matter of the proceedings before it arose.

Sittings of  
Board.

**25.** The proceedings of the Board shall be conducted in public, but the Board may order that any portion of the proceedings shall be conducted in private.

Proceedings.

**26.** The decision of any two of the members present at a sitting of the Board shall be the decision of the Board.

Decisions

**27.** The presence of the chairman and at least one other member of the Board shall be necessary to constitute a sitting of the Board.

Quorum.





Absence of member.

**28.** In case of the absence of any one member from a meeting of the Board the other two members shall not proceed, unless it is shown that the absent member has been notified of the meeting in ample time to admit of his attendance.

Appearance of parties.

**29.** Any party to an investigation may appear before the Board in person or may be represented by any other person or persons, or, with the consent of the Board, may be represented by counsel.

When counsel appointed by Minister.

**30.** Whenever in the opinion of the Minister the public interest so requires, the Minister may apply to the Minister of Justice to instruct counsel to conduct the investigation before a Board, and upon such application the Minister of Justice may instruct counsel accordingly. The fees and expenses allowed to such counsel by the Minister of Justice shall be paid out of such appropriations as are made by Parliament to provide for the cost of administering this Act.

Fees.

Contempt of Board.

**31.** If, in any proceedings before the Board, any person wilfully insults any member of the Board, or wilfully interrupts the proceedings, or without good cause refuses to give evidence, or is guilty in any other manner of any wilful contempt in the face of the Board, any officer of the Board or any constable may take the person offending into custody and remove him from the precincts of the Board, to be detained in custody until the conclusion of that day's sitting of the Board, and the person so offending shall be liable, upon summary conviction, to a penalty not exceeding one hundred dollars.

Penalty.

#### WITNESSES AND EVIDENCE

Witnesses and evidence.

**32.** For the purposes of an investigation the Board shall have all powers which are vested in any court of record in civil cases for the following purposes, namely: the summoning of witnesses before it, and enforcing their attendance from any part of Canada, of administering oaths, and of requiring witnesses to give evidence on oath or on solemn affirmation (if they are persons entitled to affirm in civil matters) and to produce such books, papers or other documents or things as the Board deems requisite to the full investigation of the matters into which it is inquiring.

Oath.

**2.** Any member of the Board may administer an oath.

Signature of chairman.

**3.** Summonses to witnesses and all other orders, process and proceedings shall be signed by the chairman.

Inspection of documents.

**33.** All books, papers and other documents or things produced before the Board, whether voluntarily or in pursuance of summons, may be inspected by the Board, and also by such parties as the Board allows.



**34.** Any party to the proceedings shall be competent and may be compelled to give evidence as a witness. Parties as witnesses.

**35.** Every person who is summoned and duly attends as a witness shall be entitled to an allowance for attendance and travelling expenses according to the scale in force with respect to witnesses in civil suits in the superior courts of the province in which the inquiry is being conducted. Expenses of witnesses.

**36.** If any person who has been duly served with a summons and to whom at the time of service payment or tender has been made of his reasonable travelling expenses according to the aforesaid scale, fails to attend or to produce any book, paper or other document or thing as required by his summons, he shall, unless he shows that there was good and sufficient cause for such failure, be guilty of an offence and liable upon summary conviction to a penalty not exceeding one hundred dollars. Failure of witness to attend or to produce documents. Penalty.

**37.** The Board may, with the consent of the Minister, employ competent experts to examine books or official reports, and to advise it upon any technical or other matter material to the investigation, but the information obtained therefrom shall not, except in so far as the Board deems it expedient, be made public, and such parts of the books, papers or other documents as in the opinion of the Board are not material to the investigation may be sealed up. Experts.

#### REMUNERATION AND EXPENSES OF BOARD.

**38.** The members of a Board shall be remunerated for their services as follows:— Remuneration of Board.

- (a) To the two members first appointed an allowance of five dollars each per day for a time not exceeding three days during which they may be actually engaged in selecting the third member of the Board.
- (b) To each member an allowance at the rate of twenty dollars for each day's sitting of the Board.

**39.** Each member of the Board shall be entitled to his actual and necessary travelling expenses and an allowance of ten dollars per day for each day that he is engaged in travelling from or to his place of residence for the purpose of attending or after having attended a meeting of the Board. Travelling expenses.

**40.** No member of the Board shall accept in addition to his travelling expenses and allowances as a member of the Board any perquisite, gift, fee or gratuity of any kind from any person in any way interested in any matter or thing that is being investigated by the Board. The acceptance of any such perquisite, Acceptance of gratuity prohibited.



Penalty. gift, fee or gratuity by any member of the Board shall be an offence, and shall render such member liable upon summary conviction to a fine not exceeding one thousand dollars, and he shall thereafter be disqualified to act as a member of any Board.

Vouchers for expenses. **41.** All expenses of the Board, including expenses for transportation incurred by the members thereof or by persons under its order in making investigations under this Act, salaries of employees and agents, and fees and travelling expenses of witnesses, shall be allowed and paid upon the presentation of itemized vouchers therefor, approved and certified by the chairman of the Board, which vouchers shall be forwarded by the chairman to the Registrar. The chairman shall also forward to the Registrar a certified and detailed statement of the sittings of the Board, and of the members present at each of such sittings.

Detailed statement of sittings.

## MISCELLANEOUS.

Technical irregularities. **42.** No proceedings under this Act shall be deemed invalid by reason of any defect of form or any technical irregularity.

Evidence of report. **43.** Evidence of a report of a Board may be given in any court by the production of a copy of *The Canada Gazette* purporting to contain a copy of such report, or by the production of a copy of the report purporting to be certified by the Registrar to be a true copy.

Allowances determined by Minister. **44.** The Minister shall determine the allowance or amounts to be paid to all persons, other than the members of a Board, employed by the Government or any Board, including the secretaries, clerks, experts, stenographers or other persons performing any services under the provisions of this Act.

Regulations by Governor in Council. **45.** The Governor in Council may make such regulations, not inconsistent with this Act, as to him seem necessary for carrying out the provisions of this Act and for the efficient administration thereof.

Publication. 2. Such regulations shall be published in *The Canada Gazette*, and upon being so published they shall have the same force as if they formed part of this Act.

To be laid before Parliament. 3. The regulations shall be laid before both Houses of Parliament within fifteen days after such publication if Parliament is then sitting, and if Parliament is not then sitting then within fifteen days after the opening of the next session thereof.

Annual report to Parliament. **46.** The Minister shall lay before Parliament, within the first fifteen days of the then next session, an annual report of the proceedings under this Act.

1907, c. 11 amended. **47.** Subsection 1 of section 12 of *The Customs Tariff, 1907*, is repealed.





**48.** This Act shall not be construed to repeal, amend or in <sup>R.S., c. 125</sup> any way affect *The Trade Unions Act*, chapter 125 of the Revised Statutes, 1906.

[SCHEDULE OMITTED]



1919

## THE BOARD OF COMMERCE ACT

9-10 George V, c. 37

*Assented to 7th July, 1919*

—

An Act to constitute a Board of Commerce for Canada.

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

## SHORT TITLE.

1. This Act may be cited as *The Board of Commerce Act*. Short title.

## INTERPRETATION.

2. In this Act, unless the context otherwise requires,— Definitions.
- (1) " Board " means the Board of Commerce of Canada, as by this Act constituted;
  - (2) " Costs " includes fees, counsel fees and expenses;
  - (3) " Exchequer Court " means the Exchequer Court of Canada;
  - (4) " Minister " means the Prime Minister or such other minister as may be designated by the Governor in Council for the purpose;
  - (5) " Secretary " means the Secretary of the Board; and
  - (6) " Special Act " means the *Combines and Fair Prices Act, 1919*.

## CONSTITUTION.

3. (1) There shall be a Board, known as the Board of Commerce of Canada, consisting of three commissioners appointed by the Governor in Council. Com-  
mis-  
sioners.

(2) Such Board shall be a court of record, and have an official seal which shall be judicially noticed. Powers and  
seal.

(3) Each commissioner shall hold office during good behaviour for a period of ten years from the date of his appointment, but may be removed at any time by the Governor in Council for cause provided that,— Tenure of  
office.

- (a) a commissioner shall cease to hold office upon reaching the age of seventy-five years; and





(b) if a judge of any superior court in Canada is appointed Chief Commissioner of the Board, he shall not be removed at any time by the Governor in Council, except upon address of the Senate and House of Commons.

(4) A commissioner on the expiration of his term of office shall, if not disqualified by age, be eligible for reappointment.

Chief Commissioner.

4. (1) One of such commissioners shall be appointed by the Governor in Council Chief Commissioner.

Qualification.

(2) Any person may be appointed Chief Commissioner who is or has been a judge of a superior court of Canada or of any province of Canada, or who is a barrister or advocate of at least ten years' standing at the bar of any such province.

Commissioner to act in his absence.

(3) A Commissioner shall have all the powers of the Chief Commissioner; but such powers shall not be exercised by him except in the absence of the Chief Commissioner, and whenever he has acted it shall be conclusively presumed that he has so acted in the absence or disability of the Chief Commissioner within the meaning of this section.

Chief Commissioner may authorize a Commissioner to exercise certain of his powers.

5. Where the Chief Commissioner deems it necessary for the more speedy and convenient despatch of business he may by writing authorize any commissioner to sign regulations, orders and other documents in his stead, and when done pursuant to such authority the same shall have the like force and effect as if signed by the Chief Commissioner.

Quorum.

6. (1) Two commissioners shall form a quorum, and not less than two commissioners shall attend at the hearing of every case: Provided that,—

When one Commissioner may act.

(a) In any case where there is no opposing party and no notice to be given to any interested party any one commissioner may act alone for the Board; and,

One Commissioner may be authorized to report to Board.

(b) the Board, or the Chief Commissioner, may authorize any one of the commissioners to report to the Board upon any question or matter arising in connection with the business of the Board, and when so authorized such commissioner shall have all the powers of two commissioners sitting together for the purpose of taking evidence or acquiring the necessary information for the purpose of such report, and upon such report being made to the Board, it may be adopted as the order of the Board or otherwise dealt with as to the Board seems proper;

Decision where opinion equal.

(c) in case of an equal division of opinion as between two commissioners the other commissioner shall be called upon for his opinion.



(2) The Chief Commissioner, when present, shall preside, and a commissioner, in the absence of the Chief Commissioner, shall preside, and the opinion of either of them upon any question arising when he is presiding, which in the opinion of the commissioners is a question of law, shall prevail.

Presiding  
Commission-  
er.

(3) No vacancy in the Board shall impair the right of the remaining commissioners to act.

Vacancy.

7. Whenever any commissioner is interested in any matter before the Board, or of kin or affinity to any person interested in any such matter, the Governor in Council may, either upon the application of such commissioner or otherwise, appoint some disinterested person to act as commissioner *pro hac vice*; and the Governor in Council may also, in the case of the illness, absence or inability to act of any commissioner, appoint a commissioner *pro hac vice*; Provided that no commissioner shall be disqualified to act by reason of interest or of kindred or affinity to any person interested in any matter before the Board.

Where  
interested in  
matter, etc.,  
Governor in  
Council may  
appoint  
another  
person to act.

8. The commissioners shall, during their term of office, reside in the city of Ottawa, or within five miles thereof, or within such distance thereof as the Governor in Council at any time determines.

Residence.

9. The commissioners shall devote the whole of their time to the performance of their duties under this Act, and shall not accept or hold any office or employment inconsistent with this section.

Whole time  
to be devoted  
to duties.

#### OFFICES.

10. (1) The Governor in Council shall, upon the recommendation of the Minister, provide, within the city of Ottawa, a suitable place in which the sessions of the Board may be held, and also suitable offices for the commissioners, and for the secretary, and the officers and employees of the Board, and all necessary furnishings, stationery and equipment for the conduct, maintenance and performance of the duties of the Board.

Offices and  
furniture, etc.,  
in Ottawa.

(2) The Governor in Council, upon the recommendation of the Minister, may establish at any place or places in Canada such office or offices as are required for the Board, and may provide therefor the necessary accommodation, furnishings, stationery and equipment.

At other  
places.

#### SITTINGS AND DISPOSAL OF BUSINESS.

11. The Board whenever circumstances render it expedient to hold a sitting elsewhere than in Ottawa, may hold such sitting in any part of Canada.

Sittings.



Times for  
sitting.

**12.** (1) The commissioners shall sit at such times and conduct their proceedings in such manner as may seem to them most convenient for the speedy despatch of business.

May sit in  
open court  
or in camera.

(2) They may, subject to the provisions of this Act, sit either in private or in open court: Provided that any complaint made to them shall, on the application of any party to the complaint, be heard and determined in open court.

Rules.

**13.** Subject to the provisions of this Act, the Board may make rules and provisions respecting,—

- (a) the sittings of the Board;
- (b) the manner of dealing with the matters and business before the Board;
- (c) the apportionment of the work of the Board among its members, and the assignment of members to sit at hearings and to preside thereat; and,
- (d) generally, the carrying on of the work of the Board, the management of its internal affairs, and the duties of its officers and employees; and in the absence of other rule or provision as to any such matter, it shall be in the charge and control of the Chief Commissioner or such other member or members of the Board as the Board directs.

#### EXPERTS.

Experts to be  
appointed.

**14.** The Governor in Council may, from time to time, or as the occasion requires, appoint one or more experts, or persons having technical or special knowledge of the matters in question, to assist in an advisory capacity in respect of any matter before the Board. He may also establish an advisory council to the Board, consisting of persons skilled and experienced in matters affecting industry, trade and commerce, and selected from among the labouring, manufacturing and commercial classes.

#### SECRETARY.

Secretary.

**15.** There shall be a Secretary of the Board who shall be appointed by the Governor in Council, hold office during pleasure, and reside in the City of Ottawa.

Duties.

**16.** (1) It shall be the duty of the Secretary,—

- (a) to attend all sessions of the Board;
- (b) to keep a record of all proceedings conducted before the Board or commissioner under this Act;
- (c) to have the custody and care of all records and documents belonging or appertaining to the Board or filed in his office;
- (d) to obey all rules and directions which may be made or given by the Board, or the Chief Commissioner, touching his duties or office;





(e) to have every regulation and order of the Board drawn pursuant to the direction of the Board, signed by the Chief Commissioner, sealed with the official seal of the Board, and filed in the office of the Secretary.

(2) The Secretary shall keep in his office suitable books of record, in which he shall enter a true copy of every such regulation and order, and every other document which the Board may require to be entered therein, and such entry shall constitute and be the original record of any such regulation or order. Records.

(3) Upon application of any person, and on payment of such fees as the Board may prescribe, the Secretary shall deliver to such applicant a certified copy of any such regulation or order. Certified copies to be given.

**17.** In the absence of the Secretary from illness or any other cause, the Board may appoint from its staff an acting secretary who shall thereupon act in the place of the Secretary, and exercise his powers. Board may appoint acting secretary in certain cases.

#### STAFF.

**18.** (1) There shall be attached to the Board such officers, clerks, stenographers and messengers as may be required. Appointment of staff.

#### SALARIES AND PAYMENTS.

**19.** (1) The Chief Commissioner shall be paid such annual salary, and each of the other commissioners such annual salary, as may be determined by the Governor in Council. Salary of commissioner.

(2) The Secretary shall be paid an annual salary to be determined by the Governor in Council. Salary of secretary.

(3) Such salaries shall be paid monthly out of such moneys as Parliament may appropriate for the purpose. How paid.

**20.** The officers, clerks, stenographers and messengers attached to the Board shall receive such salaries or remunerations as may be approved by the Governor in Council upon the recommendation of the Board. Salaries of staff how fixed.

**21.** Whenever the Board, by virtue of any power vested in it by this Act, appoints or directs any person, other than a member of the staff of the Board, to perform any service required by this Act, such person shall be paid therefor such sum for service and expenses as the Governor in Council may, upon the recommendation of the Board determine. Payment of persons appointed to do special service.



Salaries to be  
voted by  
Parliament.

**22.** The salaries or remuneration of all such officers, clerks, stenographers and messengers and all the expenses of the Board incidental to the carrying out of this Act, including all actual and reasonable travelling expenses of the commissioners and the Secretary, and of such members of the staff of the Board as may be required by the Board to travel, necessarily incurred in attending to the duties of their office, shall be paid monthly out of moneys to be provided by Parliament.

#### FRANKING PRIVILEGE.

Franking.

**23.** All letters or mailable matter addressed to the Board or the Secretary at Ottawa, or sent by the Board or the Secretary from Ottawa, shall be free of Canada postage under such regulations as are from time to time made in that regard by the Governor in Council.

#### ANNUAL REPORT.

Report.

**24.** The Board shall, within two months after the thirty-first day of March in each year, make to the Governor in Council through the Minister an annual report for the year next preceding the thirty-first day of March, showing briefly,—

- (a) applications of the Board and summaries of the findings thereon under this Act;
- (b) summaries of the findings of the Board in regard to any matter or thing respecting which the Board has acted of its own motion, or upon the request of the Minister;
- (c) such other matters as appear to the Board to be of public interest in connection with the persons, companies and matters subject to this Act; and,
- (d) such matters as the Governor in Council directs.

Laid before  
Parliament.

(2) The said report shall be forthwith laid before both Houses of Parliament, if then in session, and if not in session then during the first fifteen days of the next ensuing session of Parliament.

#### GENERAL JURISDICTION AND POWERS.

Administra-  
tion of Com-  
bines and  
Fair Prices  
Act.  
Jurisdiction.

**25.** The Board shall be charged with the general administration of *The Combines and Fair Prices Act, 1919*, which Act is hereinafter referred as to "The Special Act."

(2) The Board and its members shall have jurisdiction, as to matters of law and of fact, to investigate, inquire, hear, determine, order, appoint, direct, permit, sanction, approve or prohibit as it or they, by this Act or by the Special Act, or by the special direction from time to time of the Governor in Council may be authorized and empowered.





(3) The Board may order and require the doing forth- Powers.  
with or within any specified time, and in any manner  
prescribed by the Board, so far as is not inconsistent with  
this Act, of any act, matter or thing required or authorized  
under this Act, or the Special Act, and may forbid the doing  
or continuing of any act, matter or thing which in its  
opinion is contrary to this Act or to the Special Act.

**26.** The Board may make orders and regulations,— Orders and  
(a) with respect to any matter, act or thing which by regulations.  
this Act or the Special Act is sanctioned, required  
to be done, or prohibited;  
(b) generally for carrying this Act into effect; and, with-  
out limiting the general powers by this section con-  
ferred;  
(c) as in this Act specifically provided.

**27.** The Board may, of its own motion, or shall upon May inquire  
the request of the Minister, inquire into, hear and deter- into any  
mine any matters or things which under this Act, or under matter re-  
the Special Act, it may inquire into, hear or determine ferred to it,  
upon application or complaint, and with respect thereto etc.  
shall have the same powers as upon any application or  
complaint, are vested in it by this Act.

**28.** Any power or authority vested in the Board under Powers to be  
this Act or the Special Act may, though not so therein exercised  
expressed, be exercised from time to time, or at any time, from time  
as the occasion may require. to time.

**29.** The Governor in Council may at any time refer Governor in  
to the Board for a report, or other action, any question, Council may  
matter or thing, whether or not arising or required to be ask for  
done under this Act or the Special Act, which affects or reports.  
concerns trade, commerce, or industry, and the Board  
shall without delay comply with the requirements of such  
reference.

**30.** When any act, matter or thing is, by any regulation, Time for  
order or decision of the Board, required to be done, per- making order  
formed or completed within a specified time, the Board may be  
may, if the circumstances of the case, in its opinion, so extended.  
require, upon notice and hearing, or in its discretion upon  
*experts* application, extend the time so specified.

**31.** The Board may, in any application, proceeding or Counsel may  
matter of special importance pending before it, if in the be instructed  
opinion of the Board the public interest so requires, apply by Minister  
to the Minister of Justice to instruct counsel to conduct of Justice.  
or argue the case or any particular question arising in the  
application, proceeding or matter as to any public interest  
which



which is or may be affected thereby or by any order or decision which may be made therein; and, upon such application to him by the Board, or of his own motion, the Minister of Justice may instruct counsel accordingly.

Stating a case  
for the  
Supreme  
Court of  
Canada.

**32.** (1) The Board may, of its own motion, or upon the application of any party, and upon such security being given as it directs, or at the request of the Governor in Council, state a case, in writing, for the opinion of the Supreme Court of Canada upon any question which, in the opinion of the Board, is a question of law or of jurisdiction.

Decision  
remitted to  
Board.

(2) The Supreme Court of Canada shall hear and determine such question or questions of law arising thereon, and remit the matter to the Board with the opinion of the Court thereon.

Not to be  
bound by  
decision of  
any other  
court.

**33.** (1) In determining any question of fact, the Board shall not be concluded by the finding or judgment of any other court, in any suit, prosecution or proceeding involving the determination of such fact, but such finding or judgment shall, in proceedings before the Board, be *prima facie* evidence only.

Nor affected  
by pendency  
of any suit.

(2) The pendency of any suit, prosecution or proceeding in any other court, involving questions of fact, shall not deprive the Board of jurisdiction to hear and determine the same questions of fact.

Finding con-  
clusive.

(3) The finding or determination of the Board upon any question of fact within its jurisdiction shall be binding and conclusive.

#### ORDERS AND DECISIONS.

Orders,  
when may be  
made to  
come into  
force.

**34.** The Board may direct in any order that such order or any portion or provision thereof, shall come into force at a future time or upon the happening of any contingency, event or condition in such order specified, or upon the performance to the satisfaction of the Board, or a person named by it, of any terms which the Board may impose upon any party interested, and the Board may direct that the whole, or any portion of such order, shall have force for a limited time, or until the happening of a specified event.

Interim order  
may be  
granted.

(2) The Board may, instead of making an order final in the first instance, make an interim order, and reserve further directions either for an adjourned hearing of the matter, or for further application.

Order may be  
given granting  
whole or part  
of application  
or other  
relief.

**35.** Upon any application made to the Board under this Act, the Board may make an order granting the whole or part only of such application, or may grant such further or other relief, in addition to or in substitution for that



applied for, as to the Board may seem just and proper, as fully in all respects as if such application had been for such partial, other or further relief.

**36.** The Board may, if the special circumstances of any case so require, make an interim *ex parte* order authorizing, requiring or forbidding anything to be done which the Board would be empowered, on application, notice and hearing, to authorize, require or forbid; but no such interim order shall be made for any longer time than the Board may deem necessary to enable the matter to be heard and determined, provided that no such interim order shall have effect for a longer period than forty days.

Interim  
*ex parte*  
orders may  
be granted.

**37.** No order of the Board need show upon its face that any proceeding or notice was had or given, or any circumstances necessary to give it jurisdiction to make such order.

No order  
need disclose  
reason for  
jurisdiction.

**38.** (1) Any decision or order made by the Board under this Act may be made a rule, order or decree of the Exchequer Court, or of any superior court of any province of Canada, and shall be enforced in like manner as any rule, order or decree of such court.

Decision may  
be made rule  
or decree of  
Exchequer or  
Superior  
Court.

(2) To make such decision or order a rule, order or decree of any such court, the usual practice and procedure of the court in such matters may be followed; or, in lieu thereof, the secretary may make a certified copy of such decision or order, upon which shall be made the following endorsement signed by the Chief Commissioner and sealed with the official seal of the Board:—

Procedure.

“ To move to make the within a rule (order or decree,  
“ as the case may be) of the Exchequer Court of  
“ Canada (or as the case may be).

“ Dated this                      day of                      A.D. 19  
“ A. B.

“ Chief Commissioner of the Board of Commerce  
“ of Canada.”

(Seal)

(3) The secretary may forward such certified copy, so endorsed, to the registrar, or other proper officer of such court, who shall, on receipt thereof, enter the same as of record, and the same shall thereupon become and be such rule, order or decree of such court.

Certified  
copy such to  
registrar.

(4) When a decision or order of the Board under this Act, has been made a rule, order or decree of any court, any order or decision of the Board rescinding or changing the same shall be deemed to cancel the rule, order or decree

Rescinding  
order.





of such court, and may, in like manner, be made a rule, order or decree of such court.

Option of  
Board to en-  
force order.

(5) It shall be optional with the Board, either before or after its decision or order is made a rule, order or decree of any court, to enforce such decision or order by its own action.

Rules,  
regulations,  
etc., effect of  
publication  
in Canada  
Gazette.

**39.** Any rule, regulation, order or decision of the Board shall, when published by the Board, or by the leave of the Board, for three weeks in the *Canada Gazette*, and while the same remains in force, have the like effect as if enacted in this Act, and all courts shall take judicial notice thereof.

#### REVIEW AND APPEAL.

Review and  
rehearing, etc.

**40.** The Board may review, rescind, change, alter, or vary any order or decision made by it, or may rehear any application before deciding it.

Governor in  
Council may  
vary or re-  
scind any  
order, regula-  
tion or  
decision of  
Board.

**41.** (1) The Governor in Council may, in His discretion, either upon petition of any person interested, lodged within one month after the making of the order, decision, rule or regulation, or within such further time as the Board under special circumstances may allow, or of His own motion, at any time, and without any petition or application, vary or rescind any order, decision, rule or regulation of the Board, whether such order or decision is made *inter partes* or otherwise, and whether such regulation is general or limited in its scope and application; and any order which the Governor in Council may make with respect thereto shall be binding upon the Board and upon all parties.

Appeal to  
Supreme  
Court of Can-  
ada upon a  
question of  
jurisdiction.

(2) An appeal shall lie from the Board to the Supreme Court of Canada upon a question of jurisdiction, but such appeal shall not lie unless a judge of said court upon application within one month after the making of the order, decision, rule or regulation sought to be appealed from, or within such further time as the judge under special circumstances shall allow, and upon notice to the parties and the Board, and upon hearing such of them as appear and desire to be heard, allows the same; and the costs of such application shall be in the discretion of the judge.

Appeal on  
question of  
law or juris-  
diction, or  
both.

(3) An appeal shall also lie from the Board to such court upon any question which, in the opinion of the Board, is a question of law or a question of jurisdiction, or both, upon leave therefor having been first obtained from the Board within one month after the making of the order or decision sought to be appealed from, or within such further time as the Board under special circumstances shall allow and after notice to the opposite party stating the grounds of appeal; and the granting of such leave shall be in the discretion of the Board.



(4) No appeal after leave therefor has been obtained under subsection two or three of this section, shall lie unless it is entered in the said court thirty days from the making of the order granting leave to appeal. Limit of time for entering appeal.

(5) Upon such leave being obtained the party so appealing shall deposit with the Registrar of the Supreme Court of Canada the sum of two hundred and fifty dollars, by way of security for costs, and thereupon the Registrar shall set the appeal down for hearing at the nearest convenient time; and the party appealing shall, within ten days after the appeal has been so set down, give to the parties affected by the appeal, or the respective solicitors by whom such parties were represented before the Board, and to the secretary notice in writing that the case has been so set down to be heard in appeal as aforesaid; and the said appeal shall be heard by such Court as speedily as practicable. Security and setting down case.

(6) On the hearing of any appeal the Court may draw all such inferences as are not inconsistent with the facts expressly found by the Board, and are necessary for determining the question of jurisdiction, or law, as the case may be, and shall certify its opinion to the Board, and the Board shall make an order in accordance with such opinion. Inferences may be drawn.

(7) The Board shall be entitled to be heard by counsel or otherwise, upon the argument of any such appeal. Commissioner may have counsel.

(8) The Court shall have power to fix the costs and fees to be taxed, allowed and paid upon such appeals, and to make rules of practice respecting appeals under this section; and until such rules are made, the rules and practice applicable to appeals from the Exchequer Court shall be applicable to appeals under this Act. Costs and rules of practice.

(9) Save as provided in this section,—  
(a) every decision or order of the Board shall be final; Decisions of commissioner when final.  
and

(b) no order, decision or proceeding of the Board shall be questioned or reviewed, restrained or removed by prohibition, injunction, certiorari, or any other process or proceeding in any court.

#### PRACTICE AND PROCEDURE.

**42.** The Board may make general rules regulating, so far as not inconsistent with the express provisions of this Act, its practice and procedure. Rules of procedure.

#### NOTICE AND SERVICE.

**43.** Any notice required or authorized by this Act or by the Special Act to be given in writing,— Notices how given.

(a) by the Board, may be signed by the Chief Commissioner, or the Secretary;





(b) by any person, company, corporation or association may be signed by such person, company, corporation or association, or a duly authorized agent, officer, representative, solicitor or counsel.

Services of  
process.

**44.** Service of any notice, summons, regulation, order direction, decision, report or other document, or copy of any thereof, unless in any case otherwise provided, may be effected,—

(a) upon an incorporated company, by delivery to the president, managing director or secretary thereof in person, or by mailing by registered letters, postage prepaid, addressed to the president, managing director and secretary at the head office or chief place of business of said company;

(b) upon a firm, co-partnership or individual, by delivery to any member of such firm or co-partnership or to such individual, or at the last place of abode of any such member or of such individual to any adult member of his household, or at the office or place of business of the firm or individual to a clerk in such firm's or individual's employ.

Provided that if in any case within the jurisdiction of the Board it shall be made to appear to the satisfaction of the Board that service cannot conveniently be made in the manner above provided, the Board may order and allow service to be made by publication of the document of notice thereof for any period not less than three weeks in the *Canada Gazette*, and also, if required, in any other newspaper; and such publication shall be deemed to be equivalent to service in the manner above provided.

Notice  
required of  
applications  
to Board.

**45.** Unless otherwise provided, fifteen days' notice of any application to the Board, or of any hearing by the Board, shall be sufficient: Provided that the Board may in any case direct longer notice or allow shorter notice.

#### AMENDING PROCEEDINGS.

Amendments.

**46.** The Board may, upon terms or otherwise, make or allow any amendments in any proceedings before it.

#### COSTS.

Costs.

**47.** (1) The costs of and incidental to any proceeding before the Board, except as herein otherwise provided, shall be in the discretion of the Board, and may be fixed in any case at a certain sum, or may be taxed.

(2) The Board may order by whom and to whom any costs are to be paid, and by whom the same are to be taxed and allowed.



(3) The Board may prescribe a scale under which such costs shall be taxed.

#### WITNESSES AND EVIDENCE.

**48.** The Board may order that any witness resident or present in Canada may be examined upon oath before, or make production of books, papers, documents or articles, to, any one member of the Board, or before or to any officer of the Board, or before or to any other person named for the purpose by the order of the Board, and may make such orders as seem to it proper for securing the attendance of such witness and his examination, and the production by him of books, papers, documents or articles, and the use of the evidence so obtained, and otherwise exercise, for the enforcement of such orders or punishment for disobedience thereof, all powers that are exercised by any superior court in Canada for the enforcement of subpoenas to witnesses or punishment of disobedience thereof: Provided that no person shall be compellable, against his will, to attend for such examination or production at any place outside the province in which he is served with the order of the Board for the purpose.

Witnesses  
and evidence.

(2) The Board may issue commissions to take evidence in a foreign country, and may make all proper orders for the purpose, and for the return and use of the evidence so obtained.

Commissions.

**49.** The Board may accept or require evidence upon affidavit or written affirmation, in cases in which it seems to it proper to do so.

Evidence  
upon  
affidavits.

(2) All persons authorized to administer oaths to be used in any of the superior courts of any province may administer oaths in such province to be used in applications, matters or proceedings before the Board.

Administra-  
tion of oaths.

(3) All persons authorized by the Governor in Council to administer oaths within or out of Canada, in or concerning any proceeding had or to be had in the Supreme Court of Canada or in the Exchequer Court of Canada, may administer oaths in or concerning any application, matter or proceeding before the Board.

Persons auth-  
orized for  
Supreme or  
Exchequer  
Courts may  
act.

(4) Any oath administered out of Canada, before any commissioner authorized to take affidavits to be used in His Majesty's High Court of Justice in England, or before any notary public, certified under his hand and official seal, or before the mayor or chief magistrate of any city, borough or town corporate in Great Britain or Ireland, or in any colony or possession of His Majesty out of Canada, or in any foreign country, and certified under the common seal of such city, borough, or town corporate, or before a judge of any court of supreme jurisdiction in any colony or posses-

Outside of  
Canada.



sion of His Majesty, or dependency of the Crown out of Canada, or before any consul, vice-consul, acting-consul, pro-consul or consular agent of His Majesty, exercising his functions in any foreign place, certified under his official seal, concerning any application, matter or proceeding had or to be had by or before the Board, shall be as valid and of like effect, to all intents, as if it had been administered before a person authorized by the Governor in Council as in this section provided.

Seal and  
signature,  
evidence of.

(5) Every document purporting to have affixed, imprinted or subscribed thereon or thereto, the signature of any such person or commissioner so authorized as aforesaid, or the signature or official seal of any such notary public, or the signature of any such mayor or chief magistrate and the common seal of the corporation, or the signature and official seal of any such consul, vice-consul, acting-consul, pro-consul or consular agent, in testimony of any oath having been administered by or before him, shall be admitted in evidence before the Board without proof of any such signature or seal being the signature or seal of the person or corporation whose signature or seal it purports to be, or of the official character of such person.

Informalities.

(6) No informality in the heading or other formal requisites of any oath made before any person under any provision of this section shall be an objection to its reception in evidence before the Board, if the Board thinks proper to receive it; and if it is actually sworn to by the person making it before any person duly authorized thereto, and is received in evidence, no such informality shall be set up to defeat an indictment for perjury.

Witness fees.

**50.** Every person summoned to attend before the Board, or person appointed under this Act to make inquiry and report, shall, in the discretion of the Board, receive the like fees and allowances for so doing as if summoned to attend before the Exchequer Court.

No person  
excused from  
attending or  
bringing  
documents  
on ground  
that evidence  
may  
incriminate  
him.

**51.** No person shall be excused from attending and producing books, papers, contracts, agreements and documents, in obedience to the subpoena or order of the Board, or of any person authorized to hold any investigation or inquiry under this Act, on the ground that the documentary evidence required of him may tend to criminate him or subject him to any proceeding or penalty; but no such book, paper, contract, agreement, or document so produced shall be used or receivable against such person in any criminal proceedings thereafter instituted against him, other than a prosecution for perjury in giving evidence upon such investigation or inquiry, cause or proceeding.





**52.** (1) A copy of any regulation, order, or other document in the custody of the Secretary or of record with the Board, certified by the Secretary to be a true copy and sealed with the seal of the Board, shall be *prima facie* evidence of such regulation, order or document, without proof of signature of the Secretary. Certified copies of orders, etc. of Board *prima facie* evidence.

(2) A certificate by the Secretary sealed with the seal of the Board stating that no order or regulation respecting any specified matter or thing has been made by the Board, shall be *prima facie* evidence of the fact stated therein without proof of the signature of the Secretary. And that no proceeding had before the Board.

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1919

## BOARD OF COMMERCE AMENDMENT ACT.

10 George V, c. 1.

*Assented to 15th October, 1919.*

An Act to amend The Board of Commerce Act.

**H**IS Majesty, by and with the advice and consent of 1919, c. 37.  
the Senate and House of Commons of Canada, enacts  
as follows:—

**1.** Section four of *The Board of Commerce Act*, chapter thirty-seven of the statutes of 1919, is amended by adding thereto the following subsection:—

“(4) The Chief Commissioner shall be paid an annual salary of ten thousand dollars, and each of the other Commissioners an annual salary of eight thousand dollars. Such salaries shall be paid monthly out of the Consolidated Revenue Fund of Canada.”

Salaries of Chief Commissioner and other Commissioners.

**2.** Subsection one of section nineteen of the said Act is repealed.

Power of Governor in Council to determine above salaries repealed.

**3.** Section six of the said Act is amended by striking out subsection two thereof, and substituting therefor the following subsection:—

“(2) The Chief Commissioner when present shall preside, and in the absence of the Chief Commissioner a Commissioner to be named by the Chief Commissioner, or, if no Commissioner is so named, then a Commissioner to be named by the Governor in Council shall preside. The opinion of the Chief Commissioner or the presiding Commissioner upon any question arising when such Chief or presiding Commissioner is presiding, which in the opinion of the Commissioners is a question of law, shall prevail.”

Who is to preside.

Opinion on questions of law.

**4.** (1) Section forty-four of the said Act is amended by striking out the word “letters” in the third line of paragraph (a) and substituting therefor the word “letter”, and by striking out the word “and” in the fifth line of the said paragraph (a) and substituting therefor the word “or”.

Service of process.





(2) The said section is further amended by inserting after the word "employ" at the end of paragraph (b) thereof, the words "or by mailing by registered letter postage pre-paid addressed to such firm, copartnership, or individual at such last place of abode or office or place of business".

5. Section forty-eight of the said Act is amended by adding thereto the following subsection:—

Attendance  
of witnesses.

"(3) The Board or any Commissioner or any officer of the Board or person named under this section may by order require the attendance of any person or persons before the Board or any Commissioner or officer or person aforesaid to be examined upon oath touching any matter, and to produce books, papers, documents or articles, and any person who disobeys such order shall be guilty of an offence and liable on summary conviction to a penalty not exceeding one hundred dollars, together with costs of prosecution. The offence shall be deemed to have been committed every day the disobedience continues. This provision shall not exclude or restrict the application of the other provisions of this section."

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1919

## THE COMBINES AND FAIR PRICES ACT

9-10 George V, c. 45

*Assented to 7th July, 1919*

An Act concerning the Investigation and Restraint of Combines, Monopolies, Trusts, and Mergers and the withholding and enhancement of the price of commodities.

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

## GENERAL.

This Act may be cited as *The Combines and Fair Prices Act, 1919*. Short title.

2. The expression "combine" is used in this Act with intended relation to articles of commerce, and it shall be deemed to have reference only to such combines, immediately hereinafter defined, as, with relation as aforesaid, have, in the opinion of The Board of Commerce of Canada (or of a single member thereof acting under authority of and for the purposes of section eight of this Act) operated, or are likely to operate, to the detriment of or against the interest of the public, consumers, producers or others, and, limited as aforesaid, the said expression as used in this Act shall be deemed to include,—

- |   |   |
|---|---|
| <p>(a) mergers, trusts and monopolies, so called, and,</p> <p>(b) the relation resulting from the purchase, lease or other acquisition by any person of any control over or interest in the whole or part of the business of any other person, and,</p> <p>(c) any actual or tacit contract, agreement, arrangement or combination which has or is designed to have the effect of (1) limiting facilities for transporting, producing, manufacturing, supplying, storing or dealing; or (2) preventing, limiting or lessening manufacture or production; or (3) fixing a common price, or a resale price, or a common rental, or a common cost of storage</p> | <p>Definitions.<br/>"Combine."</p> <p>Expression to include,</p> <p>Mergers, trusts, etc.</p> <p>Control over business of others.</p> <p>Contracts, agreements, arrangements or combinations.</p> |
|---|---|



or transportation, or enhancing the price, rental or cost of article, rental, storage or transportation; or (4) preventing or lessening competition in, or substantially controlling, within any particular district, or generally, production, manufacture, purchase, barter, sale, transportation, insurance or supply; or (5) otherwise restraining or injuring commerce.

"Combine"  
not to apply  
to workmen  
or employees.

"Minister"

"Board."

(2) The expression "combine" does not include combinations of workmen or employees for their own reasonable protection as such workmen or employees;

(3) The expression "Minister" as used in this Act means the Prime Minister or such other minister as the Governor in Council may designate for the purpose, and the expression "Board" means the Board of Commerce of Canada.

Board  
of Com-  
merce of  
Canada.

3. The Board of Commerce of Canada, hereinafter referred to as "the Board," shall have the general administration of this Act which shall be read and construed as one with *The Board of Commerce Act*.

## PART 1.

### COMBINES.

Powers  
Board.

4. The Board is empowered and directed to restrain and prohibit the formation and the operations of combines.

Board of its  
own motion  
may issue  
complaint  
and hold  
investigation.

5. (1) Whenever the Board shall have reason to believe that a proceeding by it to restrain or prohibit the formation or operation of a combine would be in the public interest, it may, of its own motion, issue and serve upon any person concerned whom it may have information so justifying, a complaint stating its charges as against such person and containing a notice of a hearing upon a day and at a place therein fixed.

Attendance  
of parties.

(2) The person so complained of shall appear at the place and time fixed, and show cause why an order should not be made by the Board requiring such person to cease or desist from the acts or practices in and by such notice charged against him.

Intervening  
parties.

(3) Any other person, upon application and upon good cause shown, may be allowed by the Board to intervene and appear in said proceeding in person or by counsel.

Application  
to member  
of Board  
for order  
directing an  
investigation.

6. (1) Any British subject, resident in Canada and of full age, who is of opinion that a combine exists or is being formed may apply in writing to any member of the Board except the Chief Commissioner for an order directing an investigation into such alleged combine and fixing a time and place for the hearing of the applicant or his counsel.





(2) The application shall be accompanied by a statutory declaration setting forth,— Statutory declaration.

- (a) the name and address of the applicant, and at his election, the name and address of any counsel whom he may, for the purpose of receiving any communication to be made pursuant to this Act, have authorized to represent him; Particulars.
- (b) the nature of the alleged combine and the names of the persons believed to be concerned therein; and,
- (c) the manner in which and, where possible, the extent to which the alleged combine is believed to operate to the detriment of, or against the interest of, consumers, producers or others of the public.

7. If the Commissioner is satisfied from a perusal of the application and declaration that there is reasonable ground for believing that a combine exists, or is being formed, that it is in the public interest that an investigation be held and that further preliminary inquiry is unnecessary, he may forthwith direct an investigation under the provisions of this Act. Otherwise he shall, within a reasonable time after receipt of such application, fix a time and place for a hearing before him in support of the application and shall send or cause to be sent due notice thereof by registered letter to the applicant or to any counsel whom in or by his application or declaration the applicant may have authorized to receive communications on his behalf. Commissioner may forthwith direct an investigation, or give notice of preliminary inquiry.

8. (1) The applicant may appear on such hearing in person or by his counsel. If, upon the evidence adduced, the Commissioner is satisfied that there is reasonable ground for believing that a combine exists or is being formed and that it is in the public interest that an investigation should be held, he shall direct an investigation under the provisions of this Act, or, if not so satisfied, he may refuse to make any order. In any case he may adjourn such hearing pending the supply of further evidence in support of the application. Preliminary hearing and findings by commissioner.

(2) For the purposes of the hearing the Commissioner shall have all the powers vested in the Board of which he is a member to summon before him and enforce the attendance of witnesses, to hear evidence on oath or on solemn affirmation and compel the production of such books, papers, other documents and things as he deems requisite. Powers of commissioner, as to witnesses, evidence on oath and production of papers.

9. (1) Whenever a Commissioner makes an order for an investigation he shall sign the same and transmit it to the Secretary of the Board, and, whether or not he shall have made such an order, the Commissioner shall transmit to the Secretary the application, the statutory declaration and any evidence taken before him. Order of Commissioner transmitted to secretary, and also all documents.



Notice to  
Chief  
Commis-  
sioner and  
parties.

(2) The Secretary shall forthwith in writing notify the Chief Commissioner of the Board, and, as well, the applicant or his authorized counsel, of the result of any application. In the case of an investigation ordered, the Chief Commissioner shall fix the time and place for such investigation, of which the Secretary shall notify in writing the applicant or his authorized counsel.

Chief Com-  
missioner  
may, of his  
own  
motion,  
order  
investiga-  
tion, in any  
case.  
Notice.

(3) The Chief Commissioner, notwithstanding the refusal of the Commissioner to order an investigation, may of his own motion, if upon the materials transmitted by the Commissioner he, said Chief Commissioner, shall be of opinion that an order ought to have been made, make such order and fix a time and place for such investigation, whereupon the Secretary shall notify in writing the applicant or his authorized counsel accordingly.

Procedure  
when inves-  
tigation  
ordered.

**10.** When an investigation shall have been ordered the Board shall issue and serve upon the person complained of a complaint in manner provided in section five of this Act. Likewise the person complained of shall appear and show cause, and other persons may be allowed to intervene and in a proper case an order may be issued and served, as in and by said section five is provided.

Full and  
expeditious  
inquiry  
by Board.

Investigation  
to be  
thorough and  
complete as  
public interest  
demands.

Power to  
make such  
findings  
as are  
relevant.

Order of  
Board  
upon inves-  
tigation, to  
direct person  
complained  
of to cease  
practices  
proved  
against him.

**11.** (1) The Board shall fully, carefully and expeditiously inquire into and pronounce respecting all matters, whether of fact or of law, which shall come properly before it pursuant to the provisions of this Part of this Act. In deciding any question that may affect the scope or extent of any investigation it shall consider what is required to make the investigation as thorough and complete as the public interest demands, and, whether or not it makes or could lawfully make or issue with respect to any particular subject matter any consequential order of a binding character, it may make findings and declarations concerning such matter if, in the course of any investigation, such matter comes properly before it and is relevant generally to the inquiry being made.

(2) If, upon the hearing of any investigation, the Board shall be of opinion that a combine exists or is being formed and that the person complained of is a party thereto, it may issue and cause to be served on such person an order requiring him to cease or desist from the acts or practices actually proved against him, whether or not these are the same as those alleged in the complaint, and which in whole or in part constitute the operations of a combine or the processes of the formation of such, and to cease and desist as well from any other act or practice in pursuance of the operations of such combine or the formation thereof, to the extent to which the Board shall deem it reasonable or necessary to prohibit.





(3) Any person whom the Board shall have so ordered to cease or desist from any act or practice in pursuance of the operations of a combine or the formation thereof, and who thereafter shall omit or refuse to desist from such act or practice, shall be guilty of an indictable offence and liable to a penalty not exceeding one thousand dollars and costs for each day after the expiration of ten days or such further extension of time as in the opinion of the Board may be reasonable or necessary, from the date of the service upon such person of the Board's order, or to imprisonment for a term not exceeding two years; and any director or officer of a company or corporation who shall assent to or acquiesce in such omission or refusal by his company or corporation shall be guilty of such offence personally, and cumulatively with his company or corporation and with his co-directors or associate officers.

Penalty for omitting or refusing to cease from practices, according to order of Board.

Personal and cumulative liability of director or officer of company.

(4) Whenever, in the opinion of the Board, upon or after an investigation held in pursuance of the powers conferred by this Part of this Act, an offence has been committed against this section, the Board may remit to the Attorney General of any province within which such offence shall have been committed, for such action as such Attorney General may be pleased to institute because of the conditions appearing, certified copies of the record of the case, as before the Board, including all evidence taken, with a statement of the facts and a recommendation that prosecution be instituted.

Prosecution by Attorney General of province.

Papers transmitted.

(5) No prosecution for an offence against this section or against section four hundred and ninety-eight of the *Criminal Code* shall be commenced except upon the written authority of the Board.

No prosecution unless authorized in writing by Board.

(6) For the purposes of the trial of any indictment for any offence against this section, section five hundred and eighty-one of the *Criminal Code*, authorizing speedy trials without juries, shall apply.

Speedy trials.

**12.** Whenever, from or as a result of an investigation under the provisions of this Act, or from or as a result of a judgment of the Supreme Court or Exchequer Court of Canada or of any superior court, or circuit, district or county court of Canada, it appears to the satisfaction of the Governor in Council that, with regard to any article of commerce, there exists any combine to promote unduly the advantage of manufacturers or dealers at the expense of consumers, and if it appears to the Governor in Council that such disadvantage to the consumer is facilitated by the duties of custom imposed on the article, or on any like article, the Governor in Council may direct that either such article be admitted into Canada free of duty or that the duty thereon be reduced to such amount or rate as will, in the opinion of the Governor in Council, give the public the benefit of reasonable competition.

Governor in Council may admit article free of duty or reduce duty if satisfied, as a result of investigation under this Act, that combine exists at expense of consumers.



If owner or holder of patent makes use of exclusive rights to unduly limit production or restrain or injure trade, application may be made to Exchequer Court to revoke patent.

**13.** In case the owner or holder of any patent issued under the *Patent Act* has made use of the exclusive rights and privileges which, as such owner or holder he controls, so as unduly to limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article which may be a subject of trade or commerce, or so as to restrain or injure trade or commerce in relation to any such article or unduly to prevent, limit or lessen the manufacture or production of any article or unreasonably to enhance the price thereof, or unduly to prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation, storage or supply of any article such patent shall be liable to be revoked. And, if the Board reports that a patent has been so made use of, the Minister of Justice may exhibit an information in the Exchequer Court of Canada praying for a judgment revoking such patent, and the court shall thereupon have jurisdiction to hear and decide the matter and to give judgment revoking the patent or otherwise as the evidence before the court may require.

Trade Unions Act not affected.

**14.** This Act shall not be construed to repeal, amend or in any way affect the *Trade Unions Act*, chapter one hundred and twenty-five of the Revised Statutes, 1906.

Combines Investigation Act repealed.

**15.** *The Combines Investigation Act*, chapter nine of the Acts of nineteen hundred and ten, is wholly repealed.

## PART II.

### FAIR PRICES.

Definition.  
"Necessary of life."

**16.** For the purposes of this Part of this Act, the expression "Necessary of life" means a staple and ordinary article of food (whether fresh, preserved, canned, or otherwise treated) clothing and fuel, including the products, materials and ingredients from or of which any thereof are in whole or in part manufactured, composed, derived or made, and such other articles of any description as the Board may from time to time by special regulation prescribe.

Unreasonable accumulation or withholding forbidden.

**17.** (1) No person shall accumulate or shall withhold from sale any necessary of life beyond an amount thereof reasonably required for the use or consumption of his household or for the ordinary purposes of his business.

Excess of necessities of life and stock-in-trade to be offered for sale at reasonable and just prices.

(2) Every person who shall at any time hold any necessary of life beyond an amount thereof reasonably required as aforesaid, and every person who shall hold for purpose of sale, whether as manufacturer, wholesaler, jobber, retailer or otherwise, any stock-in-trade of any necessary of life, shall



shall offer for sale the said excess amount, or the said stock-in-trade as the case may be, at prices not higher than are reasonable and just: Provided, however, that this section shall not apply to or extend to any accumulating or withholding by any farmer, gardener, or other person, of the products of any farm, garden or other land cultivated by him, nor shall any manufacturer, wholesaler or jobber, because of anything herein contained, be under obligation to sell to other than such classes of persons as are accustomed to purchase from manufacturers, wholesalers or jobbers, respectively, nor shall any person be under obligation to sell otherwise than in accordance with the ordinary course of business.

Proviso  
as to  
farmers and  
gardeners,  
and as to  
manufac-  
turers selling  
to classes of  
persons  
accustomed to  
purchase  
from them.

**18.** (1) The Board is empowered and directed to inquire into and to restrain and prohibit,—

- (a) any breach or non-observance of any provision of this Act;
- (b) the making or taking of unfair profits for or upon the holding or disposition of necessities of life;
- (c) all such practices with respect to the holding or disposition of necessities of life, as, in the opinion of the Board, are designed or calculated to unfairly enhance the cost or price of such necessities of life.

Powers of  
Board to  
restrain and  
prohibit  
violation of  
Act, unfair  
profits, and  
practices to  
unfairly  
enhance  
prices.

(2) For the purposes of this Part of this Act, an unfair profit shall be deemed to have been made when, pursuant to and after the exercise of its powers by this Act conferred, the Board shall declare an unfair profit to have been made, and an unfair enhancement of cost or price shall be such enhancement as has resulted from the making of an unfair profit.

Unfair  
profit  
defined  
for purposes  
of this Act.

(3) The Board and each Commissioner thereof, shall deposit with its secretary all orders and declarations made by it or him under this Part of this Act, and the same shall be open at all reasonable times to the inspection of any person.

Orders of  
Board open  
to inspection.

**19.** (1) In addition to its general powers, otherwise provided, the Board may, by notice in writing under the hand of its Secretary, require any person who operates, controls, or manages any cold storage plant, packing house, cannery, factory, mine, warehouse, or other premises in which or in any part of which any necessary of life is prepared, manufactured, produced or held by such person for himself or for another, or who in any manner deals in any necessary of life, to make and render unto such Board, and or the Dominion Statistician, within a time set in such notice, or from time to time, and such person shall make and render unto such Board or Statistician, precisely as required, a written return under oath or affirmation showing in detail,—

Powers of  
Board to  
order opera-  
tor of cold  
storage  
plant, packing  
house,  
cannery,  
factory,  
mine, or  
other  
premises to  
make  
prescribed  
returns.





Particulars.

- (a) the species and amount of any necessary of life held by such person at any indicated time or times, including any time preceding the passing of this Act, where and for whom said necessary is held, and if held for another upon what terms held;
- (b) the time when any or all of such necessary of life was prepared, manufactured, produced, acquired, or taken into possession;
- (c) the cost of such necessary of life, including all charges and expenses of an overhead or other nature, affecting such cost;
- (d) the price at which such necessary of life, if already sold, has been sold, or, if unsold, is held for sale;
- (e) such other information, deemed by the Board to concern any necessary of life, as the Board may require, including a full disclosure of all existing contracts or agreements which such person or his principal or agent may have at any time entered into with any other person touching or concerning the sale or resale prices of any necessary of life, or the period of time during which any necessary of life should be held, as bailee or otherwise, before sale or resale, or limiting the quantity of any necessary of life which should be sold to any one buyer or combination of buyers or within any limited district.

Board may investigate business and examine premises and appoint examiners.

(2) If, after the receipt by the Board of any such return made in purported compliance with this Part of this Act, the Board shall consider that any circumstances so justify, or if, after a return under these regulations has been required, none is made or none is made within the time set in the notice requiring such return or within such further time as the Board may upon special application to it allow, the Board shall have power to investigate the business and to enter and examine the premises, books, papers, and records of the person making or failing to make such return, as the case may be, and, for those purposes the Board may appoint an examiner or examiners and may authorize in writing any examiner so appointed to investigate such business and to enter and examine the premises, books, papers and records of such person, and to take the evidence under oath or affirmation of any person whom such examiner may believe has knowledge relating to such matters as ought to have been included within a proper return, according to the circumstances.

Access to premises and records.

(3) Every person who is in possession or control of any such premises, books, records or papers shall give and afford to such examiner admission and access thereto whenever and as often as demanded.

No one to impede examination.

(4) No person shall in any manner impede or prevent or attempt to impede or prevent any such investigation or examination.



(5) Every person in any manner required by such examiner to give evidence under oath or affirmation touching or concerning the matters committed to such examiner for investigation shall attend before said examiner and give evidence whenever so required.

Attendance of parties as required.

**20.** Whenever, in the opinion of the Board, an offence has been committed against this Part of this Act, the Board may remit to the Attorney General of any province within which such offence shall have been committed, for such action as such Attorney General may be pleased to institute because of the conditions appearing, certified copies of (a) any return or returns which may have been made or rendered pursuant to this Act and are in the possession of the Board and relevant to such offence; and of (b) the evidence taken on any such investigation or examination and the report of the examiner.

Board may transmit papers to Attorney General of Province upon offence being committed.

(2) The Board may, in lieu of, or before, remitting any such case to the Attorney General, except in cases where it has reached its conclusion solely by means of proceedings under section nineteen of this Act, declare or find as to the guilt of the person concerned, and it may order or prohibit the doing or omission of any act or practice relevant to or connected with the offence, and in case of disobedience by such person of any term of such order he shall be guilty of an indictable offence and liable to a penalty not exceeding one thousand dollars and costs for every day after the expiration of four days or such further extension of time as in the opinion of the Board may be reasonable or necessary, from the date of the service upon such person of the Board's order during which such person continues to disobey or to omit to perform such order, or to imprisonment for a term not exceeding two years; and any director or officer of a company or corporation who shall assent to or acquiesce in such disobedience by his company or corporation, shall be guilty of such offence personally, and cumulatively with his said company or corporation and with his co-directors or associate officers.

Board may declare or find as to guilt of party concerned, and order or prohibit any act or practice.

Penalty for disobeying order.

Personal and cumulative liability of officers of company.

(3) The Board may, when the circumstances seem to it to so require, recommend to any Attorney General a prosecution under this Part of this Act, and furnish such Attorney General with a certified copy of the record of any case which has been before it, including any evidence taken, and with any other relevant proofs or information.

Board may recommend prosecution by Attorney General.

**21.** (1) No prosecution for a contravention or non-observance of any provision of this Part of this Act shall be commenced, otherwise than at the instance of the Attorney General of a province, without the written leave of the Board expressing whether such prosecution shall be

No prosecution other than by Attorney General except on written leave of Board.





by way of indictment or under Part XV of the *Criminal Code*.

Place of  
prosecution.

(2) Such prosecution shall be commenced only in the judicial district, county or municipality in which some or all of the necessary of life with respect to which the alleged offence was committed was situated at the time of the commission of the offence, or in the judicial district, county or municipality in which the person charged resides or carries on business.

Penalty for  
contravening  
or failing to  
observe  
provisions  
of this Part,  
except section  
20.

**22.** (1) Any person who contravenes or fails to observe any of the provisions of this Part of this Act other than section twenty shall be guilty of an indictable offence and liable upon indictment or upon summary conviction under Part XV of the *Criminal Code* to a penalty not exceeding five thousand dollars, or to imprisonment for any term not exceeding two years or to both fine and imprisonment as specified, and any director or officer of any company or corporation who assents to or acquiesces in the contravention or non-observance by such company or corporation of any of the said provisions shall be guilty of such offence personally and cumulatively with his company or corporation and with his co-directors or associate officers.

Speedy trials.

(2) For the purposes of the trial of any indictment for any offence against this Part of this Act, section five hundred and eighty-one of the *Criminal Code*, authorizing speedy trials without juries, shall apply.

Order in  
Council  
continued.

**23.** All proceedings instituted or had under Order in Council P.C. 3069 of the eleventh day of December, 1918, but not fully concluded, shall continue and may proceed under this Part of this Act, with the Board substituted for the Minister of Labour, as fully and effectually as if said Order in Council continued in force, notwithstanding the rescission thereof.

Governor in  
Council may  
admit  
necessary of  
life free of  
duty, or  
reduce duty,  
to secure  
reasonable  
competition.

**24.** Whenever, from or as a result of an investigation under the provisions of this Act, it appears to the satisfaction of the Governor in Council with regard to any necessary of life, that the making or taking of unfair profits thereon is facilitated by the duties of custom imposed on such necessary of life, the Governor in Council may direct either that such necessary of life be admitted into Canada free of duty or that the duty thereon be reduced to such amount or rate as will, in the opinion of the Governor in Council, give the public the benefit of reasonable competition.



1923

## THE COMBINES INVESTIGATION ACT, 1923

13-14 George V, c. 9

*Assented to 13th June, 1923*

An Act to provide for the investigation of Combines,  
Monopolies, Trusts and Mergers.

**H**IS Majesty, by and with the advice and consent of  
the Senate and House of Commons of Canada, enacts  
as follows:

**1.** This Act may be cited as *The Combines Investigation Act, 1923*. Short title.

## INTERPRETATION.

**2.** In this Act, unless the context otherwise requires,— Definitions.  
(a) The expression "Combine" in this Act shall be "Combine."  
deemed to have reference to such combines immediately  
hereinafter defined as have operated or are likely  
to operate to the detriment of or against the  
interest of the public, whether consumers, producers  
or others; and limited as aforesaid, the expression as  
used in this Act shall be deemed to include (1) Mergers,  
Trusts and Monopolies so called, and (2) the relation  
resulting from the purchase, lease, or other acquisition  
by any person of any control over or interest in the  
whole or part of the business of any other person,  
and (3) any actual or tacit contract, agreement,  
arrangement, or combination which has or is designed  
to have the effect of (i) limiting facilities for trans-  
porting, producing, manufacturing, supplying, storing  
or dealing; or (ii) preventing, limiting or lessening  
manufacture or production; or (iii) fixing a common  
price or a resale price, or a common rental, or a common  
cost of storage or transportation; or (iv) enhancing  
the price, rental or cost of article, rental storage or  
transportation; or (v) preventing or lessening com-  
petition in, or substantially controlling within any  
particular area or district or generally, production,  
manufacture,



- manufacture, purchase, barter, sale, storage, transportation, insurance or supply; or (vi) otherwise restraining or injuring trade or commerce.
- "Commissioner." (b) "Commissioner" means a commissioner appointed by the Governor in Council as hereinafter provided.
- "Corporation." (c) "Corporation" includes company.
- "Minister." (d) "Minister" means the Minister charged for the time being by order of the Governor in Council with the administration of this Act.
- "Registrar." (e) "Registrar" means the registrar appointed by the Governor in Council as hereinafter provided.

#### ADMINISTRATION AND JURISDICTION.

Administration. **3.** The Governor in Council may by order in council name a Minister of the Crown to be charged with the general administration of this Act, and the Minister so named shall be so charged accordingly.

Registrar. **4.** (1) The Governor in Council shall appoint a Registrar to be known as the "Registrar of the Combines Investigation Act."

(2) The office of Registrar may be held either separately or in conjunction with any other office in the public service, and in the latter case the Registrar may, if the Governor in Council thinks fit, be appointed not by name but by reference to such other office, whereupon the person who, for the time being, holds such office or performs its duties shall by virtue thereof be the Registrar.

Duties of Registrar. (3) It shall be the duty of the Registrar (a) to receive and register, and subject to the provisions of this Act, to deal with applications for investigation of alleged combines; (b) to bring at once to the Minister's attention every such application; (c) to conduct such correspondence with the applicant and all other persons as may be necessary; (d) to call for such returns and to make such inquiries as the Registrar may consider to be necessary in order that he may thoroughly examine into the matter brought to his attention by any application for an investigation; (e) to make reports from time to time to the Minister; (f) to conduct such correspondence with Commissioners as may be necessary, and to receive and file all reports and recommendations of Commissioners; (g) to keep a register in which shall be entered the particulars of all applications, inquiries, reports and recommendations, and safely to keep all applications, records of inquiries, correspondence, returns, reports, recommendations, evidence and documents relating to applications and proceedings conducted by the Registrar or any Commissioner, and when so required transmit all or any of such to the Minister; (h) to supply to any parties on request information as to





this Act or any regulations thereunder; (i) generally to do all such things and take all such proceedings as may be required in the performance of his duties under this Act or under any regulations made thereunder.

#### COMPLAINT AND INVESTIGATION.

5. Any six persons, British subjects, resident in Canada, of the full age of twenty-one years, who are of the opinion that a combine exists, or is being formed, may apply in writing to the Registrar for an investigation of such alleged combine, and shall place before the Registrar the evidence on which such opinion is based. The application shall be accompanied by a statement in the form of a solemn or statutory declaration showing (a) the names and addresses of the applicants, and at their election the name and address of any one of their number or of any attorney, solicitor or counsel whom they may for the purpose of receiving any communication to be made pursuant to this Act, have authorized to represent them; (b) the nature of the alleged combine and the names of the persons believed to be concerned therein and privy thereto; (c) the manner in which, and where possible the extent to which, the alleged combine is believed to operate or to be about to operate to the detriment of or against the interest of the public whether consumers, producers or others.

Application  
for investi-  
gation of  
alleged  
combine.

6. Whenever such application shall be made to the Registrar, or whenever the Registrar shall have reason to believe that a combine exists or is being formed, or whenever so directed by the Minister, the Registrar shall cause an inquiry to be made into all such matters whether of fact or of law with respect to the said alleged combine as he shall consider necessary to enquire into with the view of determining whether a combine exists or is being formed which operates or is likely to operate to the detriment of or against the interest of the public, whether consumers, producers or others.

Registrar  
shall cause  
enquiry to  
be made.

7. If, after such inquiry as he deems the circumstances warrant, the Registrar is of the opinion that the application is frivolous or vexatious, or does not justify further inquiry, he shall make a report in writing to the Minister setting out the application, the statement or statements, the inquiry made and the information obtained, and his conclusions. The Minister shall thereupon decide whether further inquiry shall or shall not be made, and shall give instructions accordingly. In case the Minister decides that further inquiry shall not be made, he shall notify the applicant of his decision, giving the grounds thereof. The

Registrar  
to report  
to Minister  
on inquiry;  
Minister to  
decide  
whether  
further  
enquiry shall  
be made.



decision of the Minister shall be final and conclusive, and shall not be subject to appeal or review.

Registrar  
may require  
written  
returns;  
and full  
disclosure of  
agreements.

8. The Registrar may at any time as part of such inquiry by notice in writing, require any person, and in the case of a corporation any officer of such corporation, to make and render unto the Registrar, within a time stated in such notice, or from time to time, a written return under oath or affirmation showing in detail such information with respect to the business of the person named in the notice as is therein specified, and such person or officer shall make and render unto the Registrar, precisely as required a written return under oath or affirmation showing in detail the information required; and without restricting the generality of the foregoing, the Registrar may require a full disclosure of all contracts or agreements which the person, named in the notice, may have at any time entered into with any other person, touching or concerning the business of the said person so named in the notice.

Power of  
Registrar to  
investigate  
and to  
enter and  
examine  
premises,  
books, etc.

9. If, after the receipt by the Registrar of any return made in purported compliance with this Act, the Registrar or the Minister shall consider that circumstances so justify, or if after a return under this Act has been required, none is made, or none is made within a time set in the notice requiring such return, or within such further time as the Registrar or the Minister may upon special application allow, the Registrar shall have power (a) to investigate the business, and (b) to enter and examine the premises, books, papers and records of and in the possession of the person making or failing to make such return.

Governor in  
Council may  
appoint  
Commission-  
ers to hold  
investiga-  
tions.

10. The Governor in Council may from time to time appoint one or more persons to be Commissioners under this Act. Every Commissioner shall have authority to investigate the business, or any part thereof, of any person who is or is believed to be a member of any combine or a party or privy thereto, and who is named in the order in council appointing the Commissioner; every Commissioner shall have authority to enter and examine the premises, books, papers and records of such person. The exercise of any of the powers herein conferred on Commissioners shall not be held to limit or qualify the powers by this Act conferred upon the Registrar.

Access to  
premises and  
records.

11. Every person who is in possession or control of any such business, premises, books, papers, or records, as are referred to in the two immediately preceding sections shall give and afford to the Registrar and to every Commissioner admission and access thereto whenever and as often as demanded.





**12.** All provisions of the *Inquiries Act* not repugnant to the provisions of this Act shall apply to any inquiry or investigation under this Act, and the Registrar and every Commissioner shall have all the powers of a commissioner appointed under the *Inquiries Act*, including the powers mentioned in section eleven thereof, whether thereunto authorized by the commission issued in the case or not, except in so far as any such powers may be inconsistent with the provisions of this Act.

Provisions of  
*Inquiries Act*  
applicable.

**13.** No person shall in any manner impede or prevent or attempt to impede or prevent any investigation, examination, or inquiry under this Act.

No one to  
impede  
investigation.

**14.** All books, papers, records or things produced before the Registrar or a Commissioner, whether voluntarily or in pursuance of an order, may be inspected by the Registrar or the Commissioner, and also by such parties as the Minister or Commissioner allows, and copies thereof may be made by or at the instance of the Registrar or Commissioner.

Registrar or  
Commissioner  
may  
inspect and  
copy books,  
etc.

**15.** The Minister may employ competent persons to examine books, papers or records, and to advise the Registrar or any Commissioner, upon any technical or other matter material to the investigation, but the information obtained therefrom shall not, except in so far as the Minister deems it expedient, be made public, and such parts of the books, papers or records as in the opinion of the Registrar are not material to the investigation may be sealed up.

Employment  
of experts.

**16.** (a) The Registrar and every Commissioner may order that any person resident or present in Canada be examined upon oath before, or make production of books, papers, records or articles to, the Registrar or Commissioner as the case may be, or before or to any other person named for the purpose by the order of the Registrar or Commissioner, and may make such orders as seem to the Registrar or Commissioner to be proper for securing the attendance of such witness and his examination, and the production by him of books, papers, records or articles, and the use of the evidence so obtained, and otherwise exercise, for the enforcement of such orders or punishment for disobedience thereof, all powers that are exercised by any superior court in Canada for the enforcement of subpoenas to witnesses or punishment of disobedience thereof.

Powers of  
Registrar  
and  
Commissioner  
as to  
witnesses,  
evidence on  
oath and  
production of  
papers.

(b) Any person summoned before the Registrar or a Commissioner shall be competent and may be compelled to give evidence as a witness.

Persons  
competent to  
give evidence  
as witnesses.

(c) Every person who is summoned and duly attends as a witness shall be entitled to an allowance for attendance and

Expenses of  
witnesses.



and travelling expenses according to the scale in force with respect to witnesses in civil suits in the superior courts of the province in which the inquiry is being conducted.

Persons served with order required to attend.

(d) If any person, who has been duly served with an order, and to whom at the time of service payment or tender has been made of his reasonable travelling expenses according to the aforesaid scale, fails to attend and give evidence, or to produce any book, paper, record, or thing as required by the said order, he shall, unless he shows that there was good and sufficient cause for such failure, be guilty of an offence and liable upon summary conviction to imprisonment for a term not exceeding six months and a fine not exceeding one thousand dollars, or to both such fine and imprisonment.

Commissioners to take evidence in foreign country.

(e) The Minister may issue commissions to take evidence in a foreign country, and may make all proper orders for the purpose and for the return and use of the evidence so obtained.

Orders to witnesses, etc., shall be signed by Registrar or Commissioner.

(f) Orders to witnesses and all other orders, process or proceedings shall be signed by the Registrar or a Commissioner.

Evidence upon affidavit or written affirmation.

**17. (a)** The Registrar and every Commissioner may accept or require evidence upon affidavit or written affirmation, in every case in which it seems to him proper to do so.

Administration of oaths in each province.

(b) The Registrar and every Commissioner and all persons authorized to administer oaths to be used in any of the superior courts of any province may administer oaths in such province to be used in applications, matters or proceedings before the Registrar or Commissioner.

Administration of oaths in proceedings in Supreme or Exchequer Courts of Canada.

(c) All persons authorized to administer oaths within or out of Canada, in or concerning any proceeding had or to be had in the Supreme Court of Canada or in the Exchequer Court of Canada, may administer oaths in or concerning any application, matter or proceeding before the Registrar or Commissioner.

No person excused from attending or giving evidence on ground that evidence may incriminate him.

**18.** No person shall be excused from attending and giving evidence and producing books, papers, or records, in obedience to the order of the Registrar or Commissioner, on the ground that the oral evidence or documents required of him may tend to criminate him or subject him to any proceeding or penalty, but no such evidence so given shall be used or receivable against such person in any criminal proceedings thereafter instituted against him, other than a prosecution for perjury in giving evidence upon such investigation, inquiry, cause or proceeding.

Proceedings in private.

**19.** The proceedings of the Registrar and every Commissioner shall be conducted in private, but the Minister may



may order that any portion of the proceedings before the Registrar or any Commissioner shall be conducted in public.

**20.** Whenever in the opinion of the Minister, the public interest so requires, the Minister may apply to the Minister of Justice to instruct counsel to conduct the investigation before the Registrar or any Commissioner and upon such application the Minister of Justice may instruct counsel accordingly.

Counsel may be instructed to conduct investigation.

**21.** At the conclusion of every investigation the Registrar and every Commissioner shall make a report in writing, which report shall be signed by the Registrar or Commissioner, as the case may be. If the report is made by a Commissioner it shall be transmitted to the Registrar, together with the evidence taken at such investigation, certified by the Commissioner and any documents and papers remaining in the custody of the Commissioner. The Registrar shall without delay transmit to the Minister his report and the report of every Commissioner. The Minister may call for an interim report at any time; and when so called for it shall be the duty of the Registrar and of every Commissioner to render an interim report setting out fully the action taken, evidence obtained and conclusions reached at the date of the interim report.

Registrar and Commissioner to report in writing on investigations.

#### ACTION.

**22.** Within fifteen days after its receipt by the Minister the report (other than an interim report) of any Commissioner shall be made public, unless the Commissioner is of the opinion that the public interest would be best served by withholding publication and so states in the report itself, in which case the Minister may exercise his discretion as to the publicity to be given to the report in whole or in part. The Minister may publish and supply copies of any report in such manner and on such terms as to him seems most desirable.

Distribution of report.

**23.** Whenever, from or as a result, of an investigation under the provisions of this Act, or from or as a result of a judgment of the Supreme Court or Exchequer Court of Canada or of any superior court, or circuit, district or county court of Canada, it appears to the satisfaction of the Governor in Council that with regard to any article of commerce, there exists any combine to promote unduly the advantage of manufacturers or dealers at the expense of the public and if it appears to the Governor in Council that such disadvantage to the public is facilitated by the duties of custom imposed on the article, or on any like article, the Governor in Council may direct either that such article be admitted into Canada free of duty or that the duty thereon be reduced to such amount or rate as will, in the opinion of the Governor in Council,

Governor in Council may admit article free of duty or reduce duty if satisfied as a result of investigation under this Act that combine exists at expense of public.





Council, give the public the benefit of reasonable competition.

If owner or holder of Patent makes use of exclusive rights to unduly limit production or restrict or injure trade Patent shall be liable to revocation.

**24.** In case the owner or holder of any Patent issued under the Patent Act has made use of the exclusive rights and privileges which, as such owner or holder he controls, so as unduly to limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article which may be subject of trade or commerce, or so as to restrain or injure trade or commerce in relation to any such article or unduly to prevent, limit or lessen the manufacture or production of any article or unreasonably to enhance the price thereof, or unduly to prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation, storage or supply of any article such patent shall be liable to be revoked. And, if the Minister reports that a patent has been so made use of, the Minister of Justice may exhibit an information in the Exchequer Court of Canada praying for a judgment revoking such patent, and the court shall thereupon have jurisdiction to hear and decide the matter and to give judgment revoking the patent or otherwise as the evidence before the court may require.

Procedure when in opinion of Minister an offence has been committed.

**25.** Whenever, in the opinion of the Minister an offence has been committed against any of the provisions of this Act, the Minister may remit to the Attorney General of any province within which such alleged offence shall have been committed, for such action as such Attorney General may be pleased to institute because of the conditions appearing, (1) any return or returns which may have been made or rendered pursuant to this Act and are in the possession of the Minister and relevant to such alleged offence; and (2) the evidence taken on any investigation by the Registrar or a Commissioner, and the report of the Registrar or Commissioner. If within three months after remission aforesaid, or within such shorter period as the Governor in Council shall decide, no action shall have been taken by or at the instance of the Attorney General of the Province as to the Governor in Council the case seems in the public interest to warrant, the Solicitor General may on the relation of any person who is resident in Canada and of the full age of twenty-one years permit an information to be laid against such person or persons as in the opinion of the Solicitor General shall have been guilty of an offence against any of the provisions of this Act; and the Solicitor General may apply to the Minister of Justice to instruct counsel to attend on behalf of the Minister at all proceedings consequent on the information so laid, and upon such application the Minister of Justice may instruct counsel accordingly.



## OFFENCES.

**26.** (a) Every one is guilty of an indictable offence and liable to a penalty not less exceeding ten thousand dollars or to two years imprisonment, or if a corporation to a penalty not exceeding twenty-five thousand dollars, who is a party or privy to or knowingly assists in the formation or operation of a combine as defined in this Act.

Penalty for violation of Act.

(b) No prosecution for any offence under this section shall be commenced, otherwise than at the instance of the Solicitor General of Canada or of the Attorney General of a province.

No prosecution except at instance of Solicitor General or Provincial Attorney General.

**27.** If in any proceedings before the Registrar or any Commissioner any person wilfully insults the Registrar or any Commissioner or wilfully interrupts the proceedings, or is guilty in any other manner of any wilful contempt in the face of the Registrar or Commissioner, the Registrar or Commissioner may direct any constable to take the person offending into custody and remove him from the precincts and presence of the Registrar or Commissioner, to be detained in custody until the conclusion of that day's sitting and the person so offending shall be liable upon summary conviction to a penalty not exceeding one hundred dollars.

Contempt of Registrar or Commissioner.

**28.** For the purpose of the trial of any indictment for any offence against this Act, section five hundred and eighty-one of the *Criminal Code*, authorizing speedy trials without juries, shall apply.

Procedure for enforcing penalties.

**29.** Any person who contravenes or fails to observe the provisions of sections eight, ten, eleven, thirteen or sixteen of this Act shall be guilty of an offence and liable upon indictment or upon summary conviction under Part XV of the *Criminal Code* to a penalty not exceeding five thousand dollars, or to imprisonment for any term not exceeding two years, or to both fine and imprisonment, as specified, and any director or officer of any corporation who assents to or acquiesces in the contravention or non-observance by such corporation of any of the said provisions shall be guilty of such offence personally and cumulatively with his corporation and with his co-directors or associate officers.

Penalties for contravention of sections 8, 10, 11, 13, or 16 of Act.

## GENERAL.

**30.** The Minister may establish at any place or places in Canada such office or offices as are required for the discharge

Establishment of offices and equipment.





discharge of the duties of the Registrar and of any Commissioner under this Act, and may provide therefor the necessary accommodation, stationery and equipment.

Appointment of Registrar and Commissioner and employment of requisite technical and special temporary assistance.

**31.** (1) All persons permanently employed under this Act shall be subject to the provisions of *The Civil Service Act, 1918*, and amendments thereto, and other similar Acts bearing on the Civil Service of Canada, provided, however, that notwithstanding anything in the said Acts or amendments thereto (a) the Governor in Council may appoint any British subject to be Registrar under this Act, and may appoint any British subject to be a Commissioner thereunder; and (b) the Minister may employ such temporary technical and special assistance as may be required to meet the special conditions that may arise in carrying out the provisions of this Act.

Expenses paid out of Parliamentary appropriation.

(2) The remuneration and expenses of the Registrar and Commissioner or Commissioners so appointed, and of the temporary technical and special assistance so employed, and the fees and expenses allowed to any counsel instructed by the Minister of Justice under this Act, shall be paid out of such appropriations as are made by Parliament to provide the cost of administering this Act.

Remuneration of technical or special temporary assistance.

(3) Whenever the Minister by virtue of any power vested in him by this Act, employs any such temporary technical or special assistance, such person shall be paid for his service and expenses such sum as the Governor in Council may determine.

Technicality not to invalidate proceedings

**32.** No proceedings under this Act shall be deemed invalid by reason of any defect of form or any technical irregularity.

Governor in Council may make necessary regulations.

**33.** (1) The Governor in Council may make such regulations, not inconsistent with this Act, as to him seems necessary, for carrying out the provisions of this Act and for the efficient administration thereof.

Publication of regulations in *Canada Gazette*.

(2) Such regulations shall be published in the *Canada Gazette* and upon being so published they shall have the same force as if they formed part of this Act.

Regulations to be laid before Parliament.

(3) The regulations shall be laid before both Houses of Parliament within fifteen days after such publication, if Parliament be then sitting, and if Parliament is not then sitting then within fifteen days after the opening of the next session thereof.

Trade Unions not affected.

**34.** Nothing in this Act shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees.

**35.**



**35.** The Minister shall lay before Parliament, within the first fifteen days of the then next session, an annual report of the proceedings under this Act. Report to Parliament of proceedings under this Act.

**36.** *The Board of Commerce Act*, chapter thirty-seven of the Acts of 1919, and *The Combines and Fair Prices Act, 1919*, chapter forty-five of the Acts of 1919, are repealed. Repeal.

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1927

## COMBINES INVESTIGATION ACT

R.S.C. 1927, c. 26

An Act to provide for the Investigation of Combines,  
Monopolies, Trusts and Mergers.

## SHORT TITLE.

**1.** This Act may be cited as the Combines Investigation Act. 1923, c. 9, s. 1.

## INTERPRETATION.

**2.** In this Act, unless the context otherwise requires, Definitions.

(1) combines which have operated or are likely to operate to the detriment or against the interest of the public, whether consumers, producers or others, and which

(a) are mergers, trusts or monopolies, so called; or

(b) result from the purchase, lease, or other acquisition by any person of any control over or interest in the whole or part of the business of any other person; or

(c) result from any actual or tacit contract, agreement, arrangement, or combination which has or is designed to have the effect of

(i) limiting facilities for transporting, producing, manufacturing, supplying, storing or dealing, or

(ii) preventing, limiting or lessening manufacture or production, or

(iii) fixing a common price or a resale price, or a common rental, or a common cost of storage or transportation, or

(iv) enhancing the price, rental or cost of article, rental, storage or transportation, or

(v) preventing or lessening competition in, or substantially controlling within any particular area or district or generally, production, manufacture, purchase, barter, sale, storage, transportation, insurance or supply, or

(vi) otherwise restraining or injuring trade or commerce,

are described by the word "combine";





- “Commissioner.” (2) “commissioner” means a commissioner appointed by the Governor in Council as hereinafter provided;
- “Corporation.” (3) “corporation” includes company;
- “Minister.” (4) “Minister” means the minister charged for the time being by order of the Governor in Council with the administration of this Act;
- “Registrar.” (5) “Registrar” means the registrar appointed by the Governor in Council as hereinafter provided. 1923, c. 9, s. 2.

3. No proceedings under this Act shall be deemed invalid by reason of any defect of form or any technical irregularity. 1923, c. 9, s. 32.

4. Nothing in this Act shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees. 1923, c. 9, s. 34.

#### ADMINISTRATION.

Admin- 5. The Governor in Council may by Order in Council  
istration. name a minister of the Crown to be charged with the general administration of this Act, and the Minister so named shall be so charged accordingly. 1923, c. 9, s. 3.

6. The Governor in Council shall appoint a registrar who is a British subject, to be known as the Registrar of the Combines Investigation Act.

2. The office of registrar may be held either separately or in conjunction with any other office in the public service, and in the latter case the Registrar may, if the Governor in Council thinks fit, be appointed not by name but by reference to such other office, whereupon the person who, for the time being, holds such office or performs its duties shall by virtue thereof be the Registrar.

3. The Governor in Council may, from time to time, appoint one or more persons who are British subjects to be commissioners under this Act.

4. The Minister may employ such temporary, technical and special assistants as may be required to meet the special conditions that may arise in carrying out the provisions of this Act. 1923, c. 9, ss. 4, 10 and 31.

7. The Civil Service Act and other Acts relating to the Civil Service, in so far as applicable, shall, except as otherwise provided in the last preceding section, apply to all permanent employees under this Act. 1923, c. 9, s. 31.

8. The Minister may establish at any place or places in Canada such office or offices as are required for the discharge of the duties of the Registrar and of any commis-



sioner under this Act, and may provide therefor the necessary accommodation, stationery and equipment. 1923, c. 9, s. 30.

#### REMUNERATION AND EXPENSES.

**9.** The remuneration and expenses of the Registrar and of any commissioner appointed under the authority of this Act, and of the temporary, technical and special assistants employed by the Minister, as well as the fees and expenses allowed to any counsel instructed by the Minister of Justice under this Act, shall be paid out of such appropriations as are provided by Parliament to provide the cost of administering this Act.

2. Any person employed by the Minister to render any temporary, technical and special assistance shall be paid for his services and expenses such sum as the Governor in Council may determine. 1923, c. 9, s. 31.

#### DUTIES OF THE REGISTRAR.

**10.** It shall be the duty of the Registrar

Duties of  
Registrar.

- (a) to receive and register, and subject to the provisions of this Act, to deal with applications for investigation of alleged combines;
- (b) to bring at once to the Minister's attention every such application;
- (c) to conduct such correspondence with the applicants and all other persons as may be necessary;
- (d) to call for such returns and to make such inquiries as the Registrar may consider to be necessary, in order that he may thoroughly examine into the matter brought to his attention by any application for an investigation;
- (e) to make reports from time to time to the Minister;
- (f) to conduct such correspondence with commissioners as may be necessary, and to receive and file all reports and recommendations of commissioners;
- (g) to keep a register in which shall be entered the particulars of all applications, inquiries, reports and recommendations, and safely to keep all applications, records of inquiries, correspondence, returns, reports, recommendations, evidence and documents relating to applications and proceedings conducted by the Registrar or any commissioner, and when so required to transmit all or any of such to the Minister;
- (h) to supply to any parties on request information as to this Act or any regulations thereunder;
- (i) generally to do all such things and take all such proceedings as may be required in the performance of his duties under this Act or under any regulations made hereunder. 1923, c. 9, s. 4.





## COMPLAINT AND INVESTIGATION.

Application  
for investi-  
gation of  
alleged  
combine.

**11.** Any six persons, British subjects, resident in Canada, of the full age of twenty-one years, who are of the opinion that a combine exists, or is being formed, may apply in writing to the Registrar for an investigation of such alleged combine, and shall place before the Registrar the evidence on which such opinion is based.

2. The application shall be accompanied by a statement in the form of a solemn or statutory declaration showing

(a) the names and addresses of the applicants, and at their election the name and address of any one of their number, or of any attorney, solicitor or counsel, whom they may, for the purpose of receiving any communication to be made pursuant to this Act, have authorized to represent them;

(b) the nature of the alleged combine and the names of the persons believed to be concerned therein and privy thereto;

(c) the manner in which, and where possible the extent to which, the alleged combine is believed to operate or to be about to operate to the detriment or against the interest of the public whether consumers, producers or others. 1923, c. 9, s. 5.

Registrar  
shall cause  
enquiry to  
be made.

**12.** Whenever such application shall be made to the Registrar, or whenever the Registrar shall have reason to believe that a combine exists or is being formed, or whenever so directed by the Minister, the Registrar shall cause an inquiry to be made into all such matters, whether of fact or of law, with respect to the said alleged combine as he shall consider necessary to enquire into with the view of determining whether a combine exists or is being formed. 1923, c. 9, s. 6.

Registrar  
to report  
to Minister  
on inquiry;  
Minister to  
decide  
whether  
further  
enquiry  
shall be  
made.

**13.** If, after such inquiry as he deems the circumstances warrant, the Registrar is of the opinion that the application is frivolous or vexatious, or does not justify further inquiry, he shall make a report in writing to the Minister setting out the application, the statement or statements, the inquiry made and the information obtained, and his conclusions; and the Minister shall thereupon decide whether further inquiry shall or shall not be made, and shall give instructions accordingly.

2. In case the Minister decides that further inquiry shall not be made, he shall notify the applicant of his decision, giving the grounds thereof.

3. The decision of the Minister shall be final and conclusive, and shall not be subject to appeal or review. 1923, c. 9, s. 7.



**14.** The Registrar may at any time as part of such inquiry by notice in writing, require any person, and in the case of a corporation any officer of such corporation, to make and render unto the Registrar, within a time stated in such notice, or from time to time, a written return under oath or affirmation showing in detail such information with respect to the business of the person named in the notice as is by the notice required, and such person or officer shall make and render unto the Registrar, precisely as required a written return under oath or affirmation showing in detail the information required; and, without restricting the generality of the foregoing, the Registrar may require a full disclosure of all contracts or agreements which the person, named in the notice, may have at any time entered into with any other person, touching or concerning the business of the said person so named in the notice. 1923, c. 9, s. 8.

Registrar may require written returns; and full disclosure of agreements.

**15.** If, after the receipt by the Registrar of any return made in purported compliance with this Act, the Registrar or the Minister shall consider that circumstances so justify, or if after a return under this Act has been required, none is made, or none is made within a time set in the notice requiring such return, or within such further time as the Registrar or the Minister may upon special application allow, the Registrar shall have power to investigate the business, and to enter and examine the premises, books, papers and records of and in the possession of the person making or failing to make such return. 1923, c. 9, s. 9.

Power of Registrar to investigate and to enter and examine premises, books, etc.

**16.** Every commissioner shall have authority to investigate the business, or any part thereof, of any person who is or is believed to be a member of any combine or a party or privy thereto, and who is named in the Order in Council appointing the commissioner, and to enter and examine the premises, books, papers and records of such person.

Governor in Council may appoint Commissioners to hold investigations.

2. The exercise of any of the powers herein conferred on commissioners shall not be held to limit or qualify the powers by this Act conferred upon the Registrar. 1923, c. 9, s. 10.

**17.** Every person who is in possession or control of any such business, premises, books, papers, or records, as are referred to in the two last preceding sections shall give and afford to the Registrar and to every commissioner admission and access thereto whenever and as often as demanded. 1923, c. 9, s. 11.

Access to premises and records.

**18.** All provisions of the Inquiries Act not repugnant to the provisions of this Act shall apply to any inquiry or investigation under this Act, and the Registrar and every

Provisions of Inquiries Act applicable.



commissioner shall have all the powers of a commissioner appointed under the Inquiries Act, including the powers which are thereby authorized to be conferred by the commission issued in the case, except in so far as any such powers may be inconsistent with the provisions of this Act. 1923, c. 9, s. 12.

No one to  
impede  
investiga-  
tions.

**19.** No person shall in any manner impede or prevent or attempt to impede or prevent any investigation, examination, or inquiry under this Act. 1923, c. 9, s. 13.

Registrar  
of Commis-  
sioner may  
inspect and  
copy books,  
etc.

**20.** All books, papers, records or things produced before the Registrar or a commissioner, whether voluntarily or in pursuance of an order, may be inspected by the Registrar or the commissioner, and also by such parties as the Minister or commissioner allows, and copies thereof may be made by or at the instance of the Registrar or commissioner. 1923, c. 9, s. 14.

Employ-  
ment of  
experts.

**21.** The Minister may employ competent persons to examine books, papers or records, and to advise the Registrar or any commissioner, upon any technical or other matter material to the investigation, but the information obtained therefrom shall not, except in so far as the Minister deems it expedient, be made public, and such parts of the books, papers or records as in the opinion of the Registrar are not material to the investigation may be sealed up. 1923, c. 9, s. 15.

Powers of  
Registrar  
and Com-  
missioner  
as to  
witnesses,  
evidence  
on oath  
and pro-  
duction of  
papers.

**22.** The Registrar and every commissioner may order that any person resident or present in Canada be examined upon oath before, or make production of books, papers, records or articles to, the Registrar or commissioner as the case may be, or before or to any other person named for the purpose by the order of the Registrar or commissioner, and may make such orders as seem to the Registrar or commissioner to be proper for securing the attendance of such witness and his examination, and the production by him of books, papers, records or articles, and the use of the evidence so obtained, and may otherwise exercise, for the enforcement of such orders or punishment for disobedience thereof, all powers that are exercised by any superior court in Canada for the enforcement of subpoenas to witnesses or punishment of disobedience thereof.

Persons  
competent  
to give  
evidence as  
witnesses.

**2.** Any person summoned before the Registrar or a commissioner shall be competent and may be compelled to give evidence as a witness.





3. Every person who is summoned and duly attends as a witness shall be entitled to an allowance for attendance and travelling expenses according to the scale in force with respect to witnesses in civil suits in the superior courts of the province in which the inquiry is being conducted.

Expenses of witnesses.

4. The Minister may issue commissions to take evidence in a foreign country, and may make all proper orders for the purpose and for the return and use of the evidence so obtained.

Commissioners to take evidence in foreign country.

5. Orders to witnesses and all other orders, process or proceedings shall be signed by the Registrar or a commissioner. 1923, c. 9, s. 16.

Orders to witnesses, etc., shall be signed by Registrar or Commissioner.

23. The Registrar and every commissioner may accept or require evidence upon affidavit or written affirmation, in every case in which it seems to him proper to do so.

Evidence upon affidavit or written affirmation.

2. The Registrar and every commissioner and all persons authorized to administer oaths to be used in any of the superior courts of any province may administer oaths in such province to be used in applications, matters or proceedings before the Registrar or commissioner.

Administration of oaths in each province.

3. All persons authorized to administer oaths within or out of Canada, in or concerning any proceeding had or to be had in the Supreme Court of Canada or in the Exchequer Court of Canada, may administer oaths in or concerning any application, matter or proceeding before the Registrar or commissioner. 1923, c. 9, s. 17.

Administration of oaths in proceedings in Supreme or Exchequer Courts of Canada.

24. No person shall be excused from attending and giving evidence and producing books, papers, or records, in obedience to the order of the Registrar or commissioner, on the ground that the oral evidence or documents required of him may tend to criminate him or subject him to any proceeding or penalty, but no such oral evidence so given shall be used or receivable against such person in any criminal proceedings thereafter instituted against him, other than a prosecution for perjury in giving evidence upon such investigation, inquiry, cause or proceeding. 1923, c. 9, s. 18.

No person excused from attending or giving evidence on ground that evidence may incriminate him.

25. The proceedings before the Registrar and every Commissioner shall be conducted in private, but the Minister may order that any portion of the proceedings shall be conducted in public. 1923, c. 9, s. 19.

Proceedings in private.



Counsel  
may be  
instructed  
to conduct  
investiga-  
tion.

**26.** Whenever in the opinion of the Minister, the public interest so requires, the Minister may apply to the Minister of Justice to instruct counsel to conduct the investigation before the Registrar or any commissioner, and upon such application the Minister of Justice may instruct counsel accordingly. 1923, c. 9, s. 20.

#### REPORTS.

**27.** The Registrar at the conclusion of every investigation which he conducts shall make a report in writing which he shall sign and without delay transmit to the Minister.

2. Every commissioner who conducts an investigation shall at the conclusion thereof make a report in writing which he shall sign and transmit to the Registrar, together with the evidence taken at the investigation, certified by the commissioner, and any documents and papers remaining in the custody of the commissioner; and the Registrar shall without delay transmit the report to the Minister.

3. The Minister may call for an interim report at any time, and it shall be the duty of the Registrar or commissioner, as the case may be, whenever thereunto required by the Minister, to render an interim report setting out fully the action taken, evidence obtained and conclusions reached at the date thereof. 1923, c. 9, s. 21.

#### PUBLICITY.

**28.** Any report of a commissioner, other than an interim report, shall within fifteen days after its receipt by the Minister be made public, unless the commissioner is of the opinion that the public interest would be better served by withholding publication and so states in the report itself, in which case the Minister may exercise his discretion as to the publicity to be given to the report in whole or in part.

2. The Minister may publish and supply copies of any report in such manner and upon such terms as to him seems most desirable. 1923, c. 9, s. 22.

#### REMEDIES.

Governor  
in Council  
may admit  
article free  
of duty or  
reduce  
duty if  
satisfied as  
a result of  
investiga-  
tion under  
this Act  
that com-  
bine exists  
at expense  
of public.

**29.** Whenever, from or as a result, of an investigation under the provisions of this Act, or from or as a result of a judgment of the Supreme Court or Exchequer Court of Canada or of any superior court, or circuit, district or county court in Canada, it appears to the satisfaction of the Governor in Council that with regard to any article of commerce, there exists any combine to promote unduly the advantage of manufacturers or dealers at the expense of the public, and if it appears to the Governor in Council that such disadvantage to the public is facilitated by the duties of custom imposed on the article, or on any like article, the Governor in Council may direct either that such



article be admitted into Canada free of duty, or that the duty thereon be reduced to such amount or rate as will, in the opinion of the Governor in Council, give the public the benefit of reasonable competition. 1923, c. 9, s. 23.

**30.** If the owner or holder of any patent issued under the Patent Act has made use of the exclusive rights and privileges which as such owner or holder he controls, so as

- (a) unduly to limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article which may be a subject of trade or commerce; or
- (b) to restrain or injure trade or commerce in relation to any such article; or
- (c) unduly to prevent, limit or lessen the manufacture or production of any article; or
- (d) unreasonably to enhance the price of any article; or
- (e) unduly to prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation, storage or supply of any article;

such patent shall be liable to be revoked.

2. If the Minister reports that a patent has been so made use of, the Minister of Justice may exhibit an information in the Exchequer Court of Canada praying for a judgment revoking the patent; and the court shall thereupon have jurisdiction to hear and decide the matter and to give judgment revoking the patent, or otherwise, as the evidence before the court may require. 1923, c. 9, s. 24.

**31.** Whenever in the opinion of the Minister an offence has been committed against any of the provisions of this Act, the Minister may remit to the attorney general of any province within which such alleged offence shall have been committed, for such action as such attorney general may be pleased to institute because of the conditions appearing, Procedure when in opinion of Minister an offence has been committed.

- (a) any return or returns which may have been made or rendered pursuant to this Act and are in the possession of the Minister and relevant to such alleged offence; and
- (b) the evidence taken on any investigation by the Registrar or a Commissioner, and the report of the Registrar or Commissioner.

2. If within three months after remission aforesaid, or within such shorter period as the Governor in Council shall decide, no such action shall have been taken by or at the instance of the attorney general of the province as to the Governor in Council the case seems in the public interest to require, the Solicitor General may on the relation of any person who is resident in Canada and of the full age of





twenty-one years permit an information to be laid against such person or persons as in the opinion of the Solicitor General shall have been guilty of an offence against any of the provisions of this Act.

3. The Solicitor General may apply to the Minister of Justice to instruct counsel to attend on behalf of the Minister at all proceedings consequent on the information so laid, and upon such application the Minister of Justice may instruct counsel accordingly. 1923, c. 9, s. 25.

#### OFFENCES AND PENALTIES.

Penalty for  
violation of  
Act.

**32.** Every one is guilty of an indictable offence and liable to a penalty not exceeding ten thousand dollars or to two years imprisonment, or if a corporation to a penalty not exceeding twenty-five thousand dollars, who is a party or privy to or knowingly assists in the formation or operation of a combine within the meaning of this Act.

No  
prosecution  
except at  
instance of  
Solicitor  
General or  
Provincial  
Attorney  
General.

2. No prosecution for any offence under this section shall be commenced, otherwise than at the instance of the Solicitor General of Canada or of the attorney general of a province. 1923, c. 9, s. 26.

Contempt  
of Registrar  
or Com-  
missioner.

**33.** If in any proceedings before the Registrar or any commissioner any person wilfully insults the Registrar or any commissioner, or wilfully interrupts the proceedings, or is guilty in any other manner of any wilful contempt in the face of the Registrar or commissioner, the Registrar or commissioner may direct any constable to take the person offending into custody and remove him from the precincts and presence of the Registrar or commissioner, to be detained in custody until the conclusion of that day's sitting.

2. The person so offending shall be liable upon summary conviction to a penalty not exceeding one hundred dollars. 1923, c. 9, s. 27.

**34.** If any person, who has been duly served with an order, issued by the Registrar or any commissioner requiring him to attend or to produce any books, papers, records or articles before the Registrar or commissioner, and to whom at the time of service payment or tender has been made of his reasonable travelling expenses according to the scale in force with respect to witnesses in civil suits in the Superior Courts of the province in which the enquiry is being conducted, fails to attend and give evidence, or to produce any book, paper, record or thing as required by the said order, he shall, unless he shows that there was good



and sufficient cause for such failure, be guilty of an offence and liable upon summary conviction to imprisonment for a term not exceeding six months and a fine not exceeding one thousand dollars, or to both such fine and imprisonment. 1923, c. 9, s. 16.

**35.** Any person, and, in the case of a corporation, any officer of the corporation, who refuses, neglects or fails

(a) to obey or comply with any notice in writing whereby the Registrar, pursuant to the authority of this Act, requires such person or officer to make and render to him within the time stated in the notice, or from time to time, any written return under oath or affirmation showing in detail such information with respect to the business of the person named in the notice as is by the notice lawfully required, or to show in the return the information so required in detail, precisely as by the notice required, in so far as the information or details are within the knowledge or possession of or available to the person or officer so notified; or

(b) to include in any such return, if thereunto required by the Registrar, and if the person or officer notified has knowledge or means of ascertaining the facts, a full disclosure of all contracts or agreements which the person named in the notice may have at any time entered into with any other person touching or concerning the business of the former;

shall be guilty of an offence and liable upon indictment or upon summary conviction to a penalty not exceeding five thousand dollars, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment. 1923, c. 9, s. 29.

**36.** Any person who, being in possession or control of the business, premises, books, papers or records of

(a) any person who has made a return, or failed to make a return when thereunto required, under the authority of this Act; or

(b) any person who is, or in respect of whom there are reasonable grounds for the belief that he is, a member of any combine or a party or privy thereto, and who is named in an Order in Council appointing a commissioner under this Act;

refuses, neglects or fails to give and afford to the Registrar or to any commissioner admission and access to the aforesaid premises, books, papers or records whenever and as often as demanded by the Registrar or any commissioner, shall be guilty of an offence and liable upon indictment or upon summary conviction to a penalty not exceeding five

26½

403

thousand

R.S., 1927.



thousand dollars, or to imprisonment for any term not exceeding two years, or to both such fine and imprisonment. 1923, c. 9, s. 29.

**37.** If a corporation offend against either of the two last preceding sections any director or officer of such corporation who assents to or acquiesces in the offence committed by the corporation shall be guilty of that offence personally and cumulatively with the corporation and with his co-directors or associate officers. 1923, c. 9, s. 29.

**38.** Any person who, in any manner, impedes or prevents, or attempts to impede or prevent, any investigation, examination or inquiry under this Act, shall be guilty of an offence and liable upon indictment or upon summary conviction to a penalty not exceeding five thousand dollars, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment. 1923, c. 9, s. 29.

#### PROCEDURE.

**39.** When an indictment is found against any person for any offence against this Act the accused shall have the option to be tried before the judge presiding at the court at which the indictment is found, or the judge presiding at any subsequent sitting of such court, or at any court where the indictment comes on for trial, without the intervention of a jury; and in the event of such option being exercised the proceedings subsequent thereto shall be regulated in so far as may be applicable by Part XVIII of the Criminal Code, respecting speedy trials of indictable offences. 1923, c. 9, s. 28.

#### REGULATIONS.

Governor  
in Council  
may make  
necessary  
regulations.

Publication  
of regula-  
tions in  
*Canada*  
*Gazette*.

Regulations  
to be laid  
before  
Parliament.

**40.** The Governor in Council may make such regulations, not inconsistent with this Act, as to him seem necessary for carrying out the provisions of this Act and for the efficient administration thereof.

**2.** Such regulations shall be published in the *Canada Gazette*, and upon being so published they shall have the same force as if they formed part of this Act.

**3.** The regulations shall be laid before both Houses of Parliament within fifteen days after such publication, if Parliament be then sitting, and if Parliament is not then sitting, then within fifteen days after the opening of the next session thereof. 1923, c. 9, s. 33.

#### MINISTER'S REPORT.

Report to  
Parliament  
of proceed-  
ings under  
this Act.

**41.** The Minister shall lay before Parliament, within the first fifteen days of the then next session, an annual report of the proceedings under this Act. 1923, c. 9, s. 35.





1927

THE PATENT ACT, SECTION 40 <sup>1</sup>

R.S.C., 1927, c. 150

**40.** Every patent, except those governed by the provisions of this Act relating to the granting of patents to persons in the public service, shall be subject to the following conditions:—

Manufacture  
for reasonable  
requirements.  
Petition to  
compel  
supply.

10

(a) Every patentee shall satisfy the reasonable requirements of the public with reference to his patent and to that end shall adequately manufacture the patented article or carry on the patented process within Canada;

(b) Any person interested may present a petition to the Commissioner alleging that the reasonable requirements of the public with respect to a patented invention have not been satisfied and praying that the patentee be ordered to supply the patented article at a reasonable price or grant licenses for the use of the invention on reasonable terms;

Powers of  
Commissioner.

(c) The Commissioner shall then consider the petition and if the parties do not come to an arrangement between themselves, shall proceed to hear and determine the matter, and if it is proved to his satisfaction that the reasonable requirements of the public with respect to the patented invention have not been satisfied, an order may be made by him requiring the patentee to supply the patented article within reasonable limits at such price as may be fixed by him and in accordance with the custom of the trade to which the invention relates as to the payment and delivery, or to grant licenses for the use of the patented invention as may be fixed by him, in either case within and after such time as may be fixed by him and on pain of forfeiture of the patent; but such order shall not be made before the expiration of three years from the date of the patent and not

Order to  
compel  
supply.

20

Exception.

<sup>1</sup> This section is substantially the same as section 40 of the Patent Act of 1923 (13-14 George V., c. 23). Corresponding sections, with their amendments, in other previous Acts respecting patents of invention are as follows:

1869—32-33 Victoria, c. 11, s. 28.  
1872—35 Victoria, c. 26, s. 28.  
1875—38 Victoria, c. 14, s. 2.  
1882—45 Victoria, c. 22, s. 1.  
1886—R.S.C., 1886, c. 61, s. 37.  
1890—53 Victoria, c. 13, s. 2.  
1891—54-55 Victoria, c. 33, s. 1.  
1892—55-56 Victoria, c. 24, s. 6.  
1903—3 Edward VII., c. 46, ss. 4-8.  
1906—R.S.C., 1906, c. 69, ss. 38-40.



less than one year after the thirteenth day of June, one thousand nine hundred and twenty-three, or if the patentee gives satisfactory reasons for his default; and that having regard to the nature of the case the Commissioner may, with the approval of the Minister, instead of hearing and determining the matter himself, refer the petition to the Exchequer Court, which shall have jurisdiction in the premises and may make such order thereon as the Commissioner is authorized to make under this section;

Reference  
to  
Exchequer  
Court.

Reasonable  
require-  
ments.

Default to 10  
manufacture  
to adequate  
extent, or  
on reason-  
able terms.

(d) For the purposes of this section the reasonable requirements of the public shall not be deemed to have been satisfied,

(i) if by reason of the default of the patentee to manufacture to an adequate extent and supply on reasonable terms the patented article, or any parts thereof which are necessary for its efficient working or to carry on the patented process to an adequate extent or to grant licenses on reasonable terms, any existing trade or industry, or the establishment of any new trade or industry, in the Dominion of Canada is unfairly prejudiced, or the demand for the patented article or the article produced by the patented process is not reasonably met, or

Unfair con-  
ditions of  
patentee. 20

(ii) if any trade or industry in the Dominion of Canada is unfairly prejudiced by the conditions attached by the patentee to the purchase, hire, or use of the patented article or to the using or working of the patented process.

Appeal.

2. Any decision of the Commissioner under this section shall be subject to appeal to the Exchequer Court. 1923, c. 23, s. 40.







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